

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Application  
Serial Number 78758494  
Published in the Official Gazette on October 10, 2006**

**SOUTHERN CHEROKEE NATION**

**vs.**

**SOUTHERN CHEROKEE NATION**

**NOTICE OF OPPOSITION**

**OPPOSER:**

Southern Cherokee Nation  
P.O. Box 581  
Webbers Falls, OK 74470  
Phone: (918) 464-2753  
E-Mail: [peacemaker@southerncherokeek.com](mailto:peacemaker@southerncherokeek.com)

**TYPE OF ENTITY: Indian Tribe**

Members of Governing Body (Council): Delilah J. Gray, John H.R. Gray,  
Andrew D. Light, Stevie A. Matthews, Kimberly S. Miller, Gilda Y. Tyler, William E. Tyler

Representative of Tribe in Legal Matters: Peacemaker Andrew D. Light

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 78758494  
For the mark SOUTHERN CHEROKEE NATION  
Published in the Official Gazette on October 10, 2006

SOUTHERN CHEROKEE NATION

v.

SOUTHERN CHEROKEE NATION

10/25/2006 6TH00AS2 00000002 70758494  
01 FC:6402

**NOTICE OF OPPOSITION**

**OPPOSER: SOUTHERN CHEROKEE NATION**  
**P.O. BOX 581**  
**WEBBERS FALLS, OK 74470**  
**Phone/fax: (918) 464-2753**  
**Email: peacemaker@southerncherokeeok.com**

**TYPE OF ENTITY: INDIAN TRIBE**

**MEMBERS OF GOVERNING BODY (COUNCIL):** Delilah J. Gray, John H.R. Gray,  
Andrew D. Light, Stevie A. Matthews, Kimberly S. Miller, Gilda Y. Tyler, William E. Tyler

**REPRESENTATIVE OF TRIBE IN LEGAL MATTERS:** Peacemaker Andrew D. Light

The above-identified opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. The Southern Cherokee Nation does not now nor has ever recognized Michael Buley or the group calling itself Southern Cherokee Nation in Henderson, Kentucky as legal representatives of the Southern Cherokee Nation. Mr. Buley attempted to claim position within the Southern Cherokee Nation here in Webbers Falls, Oklahoma in February 2005. Please see his letter and the Council response to same (See Exhibit 1).
2. The Southern Cherokee Nation was involved in a case in the United States District Court for the Eastern District of Oklahoma located in

Muskogee, Oklahoma, case no. 05-CIV-049-WH, originally filed on January 28, 2005. This case was heard February 6-10, 2006. In the process of this case, the Southern Cherokee Nation was joined as a party plaintiff by federal Judge Ronald A. White in his Order dated May 16, 2005, based upon our Motion to Join Additional Party dated April 8, 2005 (See Exhibit 2). This is a case in which Michael Buley had no involvement. Also in this case, in the testimony of Gary W. Ridge, Ridge admits that he is neither Southern Cherokee nor a descendant of Major Ridge, contrary to his claims of the past. This is the same gentleman who allegedly appointed Michael Buley to a non-existent position which he later attempted to use to claim the position of "Chief" within the tribe (See Exhibit 3, p. 8: lines 14-18, p. 40: lines 3-5, 9-19).

3. The Southern Cherokee Nation is involved in case no. CV-04-00746 in the Oklahoma District Court in Muskogee, Oklahoma, originally filed on May 20, 2004 with next action being a Disposition Hearing scheduled for January 17, 2007. Issuance of this trademark would seriously damage the tribe in this ongoing legal dispute (See Exhibit 4).
4. The Southern Cherokee Nation filed for and received Employer Identification Number 81-0551895 on May 28, 2002, recognizing the organization in Webbers Falls (misspelled at bottom to Wobbons Falls) as SOUTHERN CHEROKEE TRIBAL NATION. The issuance of this trademark would be in direct conflict to the use of this number issued by the U.S. Department of the Treasury, Internal Revenue Service (See Exhibit 5).
5. The Southern Cherokee Nation is a treaty tribe as referenced in the Treaty of 1866 with the United States (See Exhibit 6). This treaty has never been abrogated and is still in full force and effect as evidenced in case no. 03-5055 in the United States Tenth Circuit Court of Appeals in which this treaty was upheld on November 16, 2004 (See Exhibit 7). The issuance of this trademark would confer upon Mr. Buley a status which is rightfully to be decided only through the United States Congressional and Judicial systems.
6. We further believe that the issuance of a trademark to Mr. Buley for "Southern Cherokee Nation" will also be involved in the furtherance of criminal fraud. In reference to the frauds being perpetrated by Mr. Buley in the name of the Southern Cherokee Nation, we respectfully request

that you contact Mr. Paul Boyd of the U.S. Postal Inspection Service. I have been working with Mr. Boyd pertaining to fraud being perpetrated in the name of the Southern Cherokee Nation for almost two years. Mr. Boyd can give you his professional opinion of "historical documents" which can be found on Mr. Buley's website, [www.southerncherokeestation.net](http://www.southerncherokeestation.net) (See Exhibit 8). Mr. Boyd has assured me that he would be happy to give his opinion pertaining to this matter but that at this time, due to an ongoing investigation, he is unable to issue anything in writing pertaining to this incident. His contact information is listed below:

Paul Boyd  
Postal Inspector  
U.S. Postal Inspection Service  
419 SW 6<sup>th</sup>  
Oklahoma City, OK 73109-5315  
EMAIL: [pdboyd@uspis.gov](mailto:pdboyd@uspis.gov)  
TEL: 405-553-6515

7. As further evidence to the frauds being conducted online by Mr. Buley, we would also respectfully request that you contact Mr. Fred Karen, aide to Senator Mitch McConnell of Kentucky. I was informed by Mr. Karen in August 2006, after contacting the Senator's office pertaining to a document on Mr. Buley's website allegedly signed by Senator McConnell, that this "is not a legal document" (See Exhibit 9). He went on to tell me in a later conversation that he had contacted the USPTO to ascertain whether this document was being used in the attempt to obtain the trademark. Mr. Karen was informed at that time that the document had not been submitted as part of the information to obtain the trademark. At this time, we would like to submit this document as evidence of possible criminal fraud on the part of Mr. Buley. The contact numbers for Mr. Karen are as follows:

TEL: 202-224-2541  
FAX: 202-224-2499

8. We respectfully submit the following names and contact information, in addition to Mr. Boyd and Mr. Karen, for federal and local agencies with which I have been working in my capacity as Peacemaker in reference to

all criminal activities nationwide being undertaken in the name of the Southern Cherokee Nation.

Bo D. Leach  
Senior Special Agent  
SRT Commander  
1603 S. 101 E. Ave., Suite 134  
Tulsa, OK 74128  
TEL: 918-581-6306

Linda M. Sweet, CPA  
Indian Tribal Govt. Specialist  
Tax Exempt and  
Govt. Entities Division  
1645 S. 101<sup>st</sup> E. Ave.  
TEL: 918-581-7030 X 243

Linda Epperly  
Asst. U.S. District Attorney  
1200 W. Okmulgee Ave.  
Muskogee, OK 74401  
TEL: 918-684-5156

William T. Grimmer  
Asst. U.S. District Attorney  
204 S. Main St.  
South Bend, IN 46601  
TEL: 866-719-4103

Rick Ferrell  
Office of Investigation of the  
Inspector General's Office for  
U.S. Dept. of the Treasury  
Washington, D.C. 20001  
TEL: 202-927-5762

Rick Miller  
FBI  
South Bend, IN 46601  
TEL: 574-876-4033

Lt. Frank Gropp  
Henderson County Sheriff's Dept.  
Henderson, KY 42420  
TEL: 270-826-2713

Police Chief Gary Taylor  
Olla, LA 71465  
TEL: 318-495-5153

9. Mr. Buley is in no way the first appointee of Gary W. Ridge who has used the name of the Southern Cherokee in the commission of fraud. Attached please find newspaper articles pertaining to the fraudulent activities in both Louisiana and Indiana which have been perpetrated by other Gary W. Ridge appointees, including federal felony convictions (See Exhibit 10).
10. We respectfully submit that the above-listed and attached evidence is sufficient proof that Mr. Buley has not had "substantially exclusive and continuous use" of the name SOUTHERN CHEROKEE NATION as claimed by Mr. Buley in his sworn statement filed with application.

11. We also would respectfully submit that the attached documents would be sufficient for prosecution under 18 U.S.C. 1001 as evidence of Mr. Buley's knowledge pertaining to the use of the name SOUTHERN CHEROKEE NATION by other parties, particularly as evidenced in his own hand by Exhibit 1.

By Andrew D. Light Date 10/20/06  
Andrew D. Light  
Peacemaker of the Southern Cherokee Nation

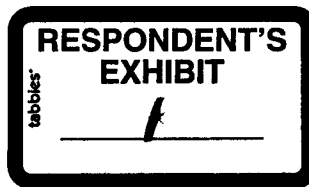
2/21/05

To the Southern Cherokee General Council.

As your sec of state with the  
resignation of Gay Ridge and Russell  
Jones. I am now stating my right  
as your Principle Chief in the  
electer Gay was appointed Principle  
Chief and Russell vice chief.  
I am the 3rd one on the list as  
Sec. of State. As of now I am  
your Principle of Chief as is my  
right as thru our constitution.

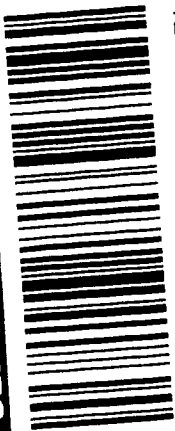
I have some ideas for the nation  
as it should go and I have some  
backing. I hope the next four  
years are very fruitful for us.

In four more years we will have  
a new election. I hope before then  
we have everything under control. Smoke and  
Prayer.



Michael Belag

Budley  
919 Pleasant Hill Rd.  
Henderson, Ky 42420



7003 2260 0005 4179 3034

POSTAL



U.S. POSTAGE  
PAID  
HENDERSON, KY  
42420  
FEB 22, 05  
AMOUNT

\$4.42  
000-43437-0

0000

65401

2-26-06 ✓

Stevie Allen Mathew  
10141 Co. Rd. 8156  
Rolla, Mo. 65401

RETURN RECEIPT  
REQUESTED

9901+3234 02



Dear Mr. Buley,

This letter is in regards to your contacting tribal members and telling them you are Chief of the SCN, due to your position as Secretary of State. You were appointed by a Vice- Chief who had no authority whatsoever to do so. The legal Council and Committee did not approve this appointment. There is nothing in the Constitution about a Secretary of State. We do not have a court system. The SCN is not the Treaty party. They are not the CNO. They are people that go back to Stand Watie's regiments that fought for the south, or lived in the Canadian District. If it does not come through the General Council, it is not from the SCN. If this does not stop, we will be forced to take legal action. Thank You SCN, elected General Council.

SCN General Council

P.O. Box 581

Webbers' Falls, Ok. 74470

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$

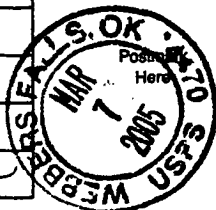
Certified Fee

Return Receipt Fee  
(Endorsement Required)

Restricted Delivery Fee  
(Endorsement Required)

Total Postage & Fees

\$ 4.42



Sent To

Michael Buley

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4

PS Form 3800, June 2002

See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Michael Buley  
7919 Pleasant Hill Rd  
Henderson Ky 42420

**COMPLETE THIS SECTION ON DELIVERY**

**A. Signature**

X Michael Buley

☐ Agent

☐ Addressee

**B. Received by (Printed Name)**

**C. Date of Delivery**

**D. Is delivery address different from item 1?  
If YES, enter delivery address below:**

☐ Yes  
☒ No

**3. Service Type**

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

**4. Restricted Delivery? (Extra Fee)**

Yes

**2. Article Number**

(Transfer from service label)

7004 2890 0002 0870 5114

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-P-400

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Southern Cherokee General Council  
PO Box 581  
Webbers Falls Ok 74470



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

JOHN GRAY, et al.,

Plaintiffs,

v.

GARY WAYNE RIDGE, et al.,

Defendants.

Case No. CIV-05-049-WH

FILED

MAY 18 2005

ORDER

Before the Court are two motions. The parties have done considerable filing, much of it at cross-purposes. On January 28, 2005, the complaint in this case was filed, alleging improprieties on defendants' part as to tribal governance and tribal land, allegedly in violation of federal civil rights. The claims were brought on behalf of multiple plaintiffs, only one of whom signed the complaint, in a pro se capacity.

Defendants filed a motion to dismiss on March 7, 2005, asserting lack of subject matter jurisdiction. On March 24, 2005, the Court entered an Order directing that an amended complaint be filed providing all pro se plaintiffs' signatures, and address and telephone number, if any. On April 8, 2005, attorney Corrine O'Day filed an entry of appearance on behalf of plaintiffs. This filing obviated the Court's concerns reflected in the March 24 Order.

On the same day, Ms. O'Day filed a motion to join additional party. She moved the Court to join the Southern Cherokee Nation as a necessary plaintiff. A proposed amended complaint was also submitted, which named the Southern Cherokee Nation as a plaintiff. A

hearing took place April 27, 2005. During the hearing, the Court questioned Ms. O'Day, based on the tentative assumption that plaintiffs sought to add Southern Cherokee Nation as an involuntary plaintiff. "A party may be made an involuntary plaintiff only if the person is beyond the jurisdiction of the court, and is notified of the action and refuses to join." Wright & Miller, Federal Practice and Procedure §1606 at 73 (2001). Plaintiffs' motion to join additional party had made no effort to demonstrate these factors. "[I]f the absentee is within the jurisdiction, the absentee must be served with process and made a defendant." *Id.* at 74.

The Court made its tentative assumption because plaintiffs cited Rule 19 F.R.Cv.P. (joinder of necessary party) as authority for the motion. If plaintiffs sought to add Southern Cherokee Nation other than as an involuntary plaintiff, all that needed to be done was the filing of an amended complaint. A motion to dismiss does not constitute a "responsive pleading" under Rule 15(a) F.R.Cv.P., and therefore plaintiffs could have amended their complaint without requesting or receiving leave of court. *See Brever v. Rockwell Int'l Corp.*, 40 F.3d 1119, 1131 (10<sup>th</sup> Cir.1994).

The assumption was evidently incorrect. In plaintiffs' reply to defendants' objection to the motion to join additional party, plaintiffs concede that "Southern Cherokee Nation cannot be made a party without its consent."<sup>1</sup> For their part, defendants "admit that [Southern Cherokee Nation] is a necessary party to resolution of Plaintiffs' alleged grievances, but deny that Plaintiffs have the authority to act on behalf of [Southern Cherokee

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<sup>1</sup>The concession should be that Southern Cherokee Nation cannot be made a party plaintiff without its consent.

Nation] as a Plaintiff.” Both sides have submitted evidentiary materials, involving election results, the voiding of said results, and the minutes of meetings.

Under the circumstances, the Court elects to treat the plaintiffs’ motion to join additional party as a traditional motion to amend complaint. Pursuant to Rule 15 F.R.Cv.P., “leave to amend shall be freely given when justice so requires.” Leave to amend should generally be refused only on a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment. *Duncan v. Manager, Dept. of Safety*, 397 F.3d 1300, 1315 (10<sup>th</sup> Cir.2005). In their opposition, defendants have demonstrated none of these circumstances, except perhaps futility, if plaintiffs are actually not authorized to represent the Southern Cherokee Nation.

As the Court has already stated, resolution of this issue is fact-intensive and will require review of evidentiary materials outside the pleadings. Therefore, the Court will permit the amended complaint (which plaintiffs could have filed without leave of court in any event) and defendants may challenge the propriety of the Southern Cherokee Nation as a party plaintiff by filing a motion for summary judgment.

When such a motion is filed, defendants may also address, in fuller form than their two-page motion to dismiss<sup>2</sup>, the issue of subject matter jurisdiction. Plaintiffs have conceded defendants’ argument that diversity jurisdiction does not exist in this case.

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<sup>2</sup>The Court will deny the pending motion to dismiss in view of the filing of an amended complaint.

Plaintiffs have cited 28 U.S.C. §1362, which provides original jurisdiction of civil actions “brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.” (emphasis added). Plaintiffs concede that the Southern Cherokee Nation is not federally recognized at this time. Thus, jurisdiction under this statute appears unavailable, but the Court reserves ruling.

Plaintiffs also cite 28 U.S.C. §1337, which they assert provides district courts jurisdiction over “causes of action which affect interstate commerce” This is incorrect. The statute confers jurisdiction over actions arising under an Act of Congress regulating commerce or protecting trade and commerce against restraint or monopolies when the Act of Congress does not have its own jurisdiction-conferring provision. *See IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1015 (2d Cir.1975). In other words, the statute confers jurisdiction in particular cases but does not in and of itself create a federal cause of action. *See Colorado Labor Council, AFL-CIO v. Amer. Federation of Labor*, 481 F.3d 396, 400 (10<sup>th</sup> Cir.1973). Applicability of the statute to this case merits further briefing by the parties<sup>3</sup>.

Finally, plaintiffs have not responded to defendants’ citation of *Santa Clara Pueblo v. Martinez*, 346 U.S. 49 (1978)(Indian Civil Rights Act provides no federal cause of action, aside from habeas corpus, against a tribe or its officers) or to the issue of tribal sovereign


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<sup>3</sup>Plaintiffs also suggest that alleged violation of the federal mail and wire fraud statutes provide jurisdiction in a civil case. (Response to Motion to Dismiss at 5). The Tenth Circuit has ruled to the contrary. *See Oppenheim v. Sterling*, 368 F.2d 516, 518-19 (10<sup>th</sup> Cir.1966), *cert. denied*, 386 U.S. 1011 (1967).

immunity regarding §1983 actions. *See E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297 (10<sup>th</sup> Cir.2001)(employees of tribal social services enjoyed sovereign immunity from mother's civil rights claims). The proposed amended complaint submitted to the Court does not reference (as did the original pro se complaint) the Indian Civil Rights Act or 42 U.S.C. §1983. Indeed, the proposed amended complaint does not reference the means by which plaintiffs seek to assert a federal claim. This defect should be remedied in the amended complaint which plaintiffs actually file.

It is the Order of the Court that the motion of the plaintiffs to join additional party (#17), treated as a motion to amend complaint, is hereby GRANTED. Plaintiffs shall file an amended complaint within ten (10) days of the date of this Order. The motion of the defendants to dismiss (#10) is hereby DENIED without prejudice, subject to renewal upon the filing of the amended complaint. The parties are advised that the Court will consider such a renewed motion as a motion for summary judgment to the extent the Court must consider materials outside the pleadings in its resolution.

ORDERED THIS 16<sup>th</sup> DAY OF MAY, 2005.

  
\_\_\_\_\_  
RONALD A. WHITE  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF OKLAHOMA  
05 APR -8 PM 3:23  
WILLIAM E. GUTHRIE, CLERK  
BY \_\_\_\_\_ DEPUTY CLERK

JOHN GRAY, DELILAH GRAY,  
STEVIE MATTHEWS, ANDREW LIGHT,  
CAROLE LIGHT, MELVA BOOKOUT,  
LENORA WILLIAMS, and SHIRLEY  
TAYLOR, et. al.

Plaintiffs,

vs.

Case No. CIV-05-049-WH

GARY WAYNE RIDGE AND JOANN  
RIDGE, husband and wife, JUDITH  
GUNIER, BRENT GILL and RUSSELL  
JONES, et. al.

Defendant.

**MOTION TO JOIN ADDITIONAL PARTY**

**COME NOW** the Plaintiffs, by and through their attorney of record, Corrine O'Day, and pursuant to Rule 19, Fed. R. Civ. P. hereby move this Honorable Court for an Order joining the Southern Cherokee Nation as a necessary party to this action. In support of this Motion, Plaintiffs would show the Court as follows:

1. All Plaintiffs are members or married to a member of the Southern Cherokee Nation.
2. All the claims involved herein benefit both the Plaintiffs and the Southern Cherokee Nation.
3. All the Plaintiffs herein raise claims on behalf of Southern

Cherokee Nation.

4. Plaintiffs failed to include Southern Cherokee Nation in the caption when they filed their original complaint pro se.

Plaintiffs have retained an attorney to represent them further in this action.

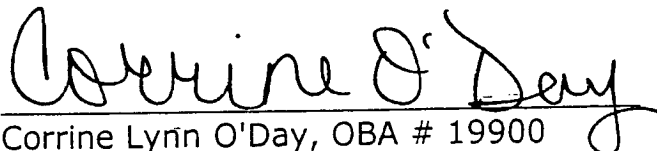
5. Southern Cherokee Nation is a necessary Plaintiff, in that some of the claims Plaintiffs have raised are claims which Plaintiffs are not the direct beneficiaries.

6. Plaintiff's Counsel attempted to contact Counsel for all Defendants, but was unable to have direct contact with Counsel for all Defendants.

7. At this time, no Scheduling Order has been entered such that Joinder of Parties is out of time or will affect an existing Scheduling Order in any way.

**WHEREFORE**, Plaintiffs pray that this Court allow the Joinder of Southern Cherokee Nation as a necessary party under Rule 19, Federal Rules of Civil Procedure.

Respectfully submitted,



Corrine Lynn O'Day, OBA # 19900  
314 W. Broadway St.  
Muskogee, OK 74401-6610  
Phone: (918) 680-3400

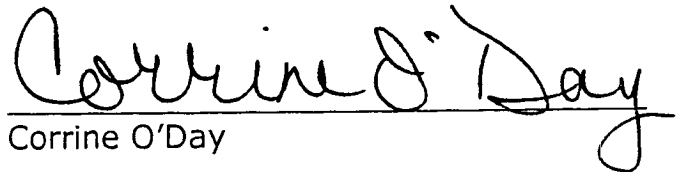
Fax: (918) 680-3401  
Attorney for the Plaintiffs

**CERTIFICATE OF MAILING**

I, Corrine O'Day, hereby certify that on April 8th, 2005, I caused to be mailed, by first-class mail postage prepaid, a true and correct copy of the within and foregoing First Amended Complaint, to:

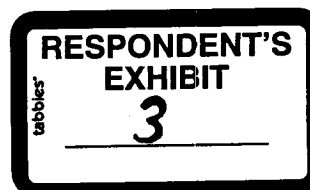
Troy R. Douglas  
1817 Harvard Avenue  
Fort Smith, AR 72908-8559

Bill R. Perceful  
P.O. Box 237  
Pocola, OK 74902

  
Corrine O'Day

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

JOHN GRAY, DELILAH GRAY, STEVIE )  
MATTHEWS, ANDREW LIGHT, CAROLE )  
LIGHT, MELVA BOOKOUT, LENORA )  
WILLIAMS and SHIRLEY TAYLOR, )  
and SOUTHERN CHEROKEE NATION, )  
Plaintiffs, )



vs. ) No. CIV-05-49-RAW

GARY WAYNE RIDGE and JOANN RIDGE, )  
husband and wife, JUDITH GUNIER, )  
BRENT GILL, and RUSSELL JONES, )

**ORIGINAL**

Defendants. )

\* \* \* \* \*

PARTIAL TRANSCRIPT OF JURY TRIAL  
February 7, 2006  
before the HONORABLE RONALD A. WHITE,  
United States District Court Judge

\* \* \* \* \*

A P P E A R A N C E S

MS. CORRINE O'DAY-HANAN, P.O. Box 676, Muskogee,  
Oklahoma, 74402, attorney on behalf of the Plaintiffs;

MR. JON VELIE, Velie & Velie, 210 East Main Street,  
Suite 222, Norman, Oklahoma, 73069, attorney on behalf of  
the Defendants.

Reported by

Ken Sidwell, RPR  
United States Court Reporter  
P.O. Box 3411  
Muskogee, Oklahoma 74402

United States District Court

1 helps me hear you a little better.

2 A Okay.

3 Q Now, you stated that you were investigating your  
4 heritage. Did you, in fact, discover that you were not  
5 related to any Southern Cherokee Indians?

6 A I can't make that statement now. I don't know.

7 Q At this time, as you sit here today, you've not found  
8 any evidence of your history to the Southern Cherokees?

9 A It's possible, but I haven't really researched my  
10 genealogy to a particular Southern Cherokee because I  
11 didn't see it mattered.

12 Q Okay.

13 A And I wasn't out for monetary gain.

14 Q I understand. But the question is: At this time, as  
15 you sit here today, you have not yet found any evidence  
16 that you trace to Southern Cherokee; right? Is it yes or  
17 no?

18 A I'll have to say no, but it's a --

19 Q Thank you.

20 A -- long shot.

21 Q Do you recall the date you discharged from the  
22 military service?

23 A Beg your pardon?

24 Q The date you discharged from the military service?

25 A South Carolina.

1 member of the Southern Cherokee Nation?

2 A No, I'm not.

3 Q Have you ever been a member -- an enrolled member of  
4 the Southern Cherokee Nation?

5 A No, ma'am.

6 Q At all times since the system changed, you've been  
7 simply a registered applicant?

8 A That's correct.

9 Q It's true, sir, that in the past you have informed  
10 members who have attended these meetings from 1999, 2000,  
11 2001 to 2002 that at each of these meetings you informed  
12 the members that you were direct descendant of Major  
13 Ridge?

14 A That is a lie.

15 Q Okay. Is it not true that you have told people you  
16 are a direct descendant of Major Ridge?

17 A No, I have not.

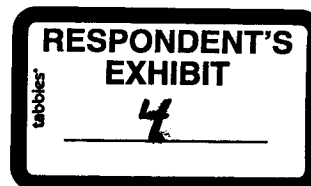
18 Q Is it not true that you told people that you're a  
19 direct descendant of a brother of Major Ridge?

20 A I have told people that I descend from Scarslaw  
21 (phonetic) Ridge. I think he was possibly the brother of  
22 Major Ridge. That part, yes, that is true.

23 Q Now, is it not true that Major Ridge is a significant  
24 historical figure to the Southern Cherokee Nation?

25 A Yes, it was.

# Oklahoma District Court Records


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## Case Detail

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**County** Muskogee - County Last Updated: 10/06/2006 16:20  
**Case** CV-04-00746  
 DYNAMIC GAMING SOLUTIONS INC. vs. SOUTHERN CHEROKEE NATION  
**Date Filed** 05/20/2004  
**Amount owed** \$0.00 (as of 10/06/2006 16:20)

### CAUSE QUIET TITLE

### PARTIES

**Judge** NORMAN, MIKE  
**Plntf Atty.** WRIGHT STOUT FITE WILBURN - MUSKOGEE OK  
**Plaintiff** DYNAMIC GAMING SOLUTIONS INC.  
**Attorney** VELIE, JON - NORMAN OK  
**Attorney** MCDUGAL, CRAIG - NORMAN OK  
**Defendant** SOUTHERN CHEROKEE NATION

Date	Case Entries	Amount
05/20/2004	FILE & ENTER PETITION	\$72.00
	LAW LIBRARY	\$6.00
	DISPUTE MEDIATION	\$2.00
	CHILD ABUSE MULTIDISCIPLINARY ACCOUNT (\$91.00)	\$10.00
	10% Assessment for Collection and Disbursal of CAMA Fee	\$1.00
05/20/2004	ORDER TO VACATE DEED	
06/01/2004	ENTRY OF APPEARANCE	
06/01/2004	MOTION TO INTERVENE	
06/01/2004	MOTION AND MEMORANDUM OF AUTHORITIES FOR ADMITTANCE PRO	
	HAC VICE	
06/01/2004	MOTION TO VACATE COURT ORDER AND MOTION TO DISMISS	\$20.00
	(Entry with fee only)	\$10.00
	(Entry with fee only)	\$1.00
06/02/2004	CHECK ON HARROLD RETURNED INSF. FUNDS	\$91.00
06/02/2004	RETURN CHECK FEE WAIVED PER PAULA SEXTON JB	
06/16/2004	NOTICE OF MOTION TO DIANNE BARKER HARROLD	
06/16/2004	ORDER FOR ADMISSION PRO HAC VICE	
06/17/2004	MOTION FOR CONTINUANCE	
06/18/2004	MOTION TO INTERVENE/TO VACATE. PLAINTIFF'S MOTION FOR	

	CONTINUANCE GRANTED. ATTYs TO RESET AFTER 6-21-04. MN	
06/24/2004	ORDER SETTING HEARING ON MOTION TO INTERVENE	
07/22/2004	NOTICE OF CASE SETTING - RESET	
08/06/2004	MOTION TO VACATE AND MOTION TO INTERVENE. COURT FINDS	
	SERVICE, AS PER DEFAULT JOURNAL ENTRY BY MR. DOUGLAS.	
	MN	
02/04/2005	ENTRY OF APPEARANCE	
02/04/2005	ORDER SETTING HEARING	
03/11/2005	MOTION FOR CONTINUANCE	
03/11/2005	ORDER FOR CONTINUANCE	
03/11/2005	ORDER TO RESET HEARING	
03/11/2005	DECLARATION AND MOTION	
03/14/2005	MOTION TO INTERVENE. PASSED BY PLAINTIFF TO 3-28-05.	
	ALL PARTIES NOTIFIED. MN	
03/28/2005	ENTRY OF APPEARANCE	
03/28/2005	MINUTE ORDER	
03/28/2005	SCHEDULING ORDER	
03/28/2005	MOTION TO INTERVENE. AS PER AGREED SCHEDULING ORDER.	
	MN	
07/19/2005	NOTICE OF CASE SETTING	
08/17/2005	CM PL/C. RICHARDSON; DEF/T. DOUGLAS	
	STRIKE TA	
09/06/2005	PRE-TRIAL CONFERENCE. STRICKEN, NO APPEARANCES. MN	
09/14/2005	PETITION FOR DECLARATORY JUDGMENT	
09/14/2005	ORDER SETTING HEARING	
10/14/2005	MOTION FOR SUMMARY JUDGMENT	\$50.00
10/17/2005	REQUEST SEEKING CONFESSION OF ALLEGATIONS CONTAINED IN	
	PETITION FOR DECLARATORY JUDGMENT DUE TO DEFENDANT'S	
	FAILURE TO RESPOND AND PETITIONER'S RESPONSE TO	
	DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	
10/17/2005	DECLARATORY JUDGMENT. PARTIES TO RESET. NT	
10/17/2005	MOTION FOR SUMMARY JUDGMENT PASSED TO 11-14-05 AT	
	9:00 A.M. NT	
11/09/2005	ENTRY OF APPEARANCE	
11/09/2005	MOTION FOR CONTINUANCE	
11/09/2005	ORDER OF CONTINUANCE	
12/13/2005	MOTION TO DISMISS	
12/13/2005	BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS	
12/13/2005	ORDER FOR HEARING	
12/13/2005	DECLARATORY JUDGMENT. PL: LLOYD PAYTON; DEF: JOHN	
	VELIE. MR. DOUGLAS ALLOWED TO WITHDRAW. PASSED	
	TO 1-13-06 @ 1:30 ALL ISSUES, LETTER WITHIN TEN DAYS.	
	MN	
01/10/2006	MOTION FOR CONTINUANCE	

01/10/2006	ORDER OF CONTINUANCE	
02/13/2006	ENTRY OF APPEARANCE	
02/13/2006	ALL ISSUES PENDING. PL: CHAD RICHARDSON; DEF: CRAIG	
	MCDOGAL. DECISION 2-21-06 @ 9:00. MN	
02/21/2006	DECISION. NOTIFIED ATTYS BY PHONE. ALL MOTIONS	
	DENIED, SCHEDULING CONFERENCE ORDER WITHIN 20 DAYS,	
	PL TO DEF. MN	
03/03/2006	ANSWER TO PETITION FOR DECLARATORY JUDGMENT AND BRIEF	
	IN SUPPORT, WITH COUNTERCLAIM	
04/20/2006	MOTION FOR DEFAULT JUDGMENT	
04/21/2006	ORDER SETTING HEARING	
05/12/2006	MOTION FOR DEFAULT JUDGMENT. DEF: JON VELIE; CORRINE	
	O'DAY HANAN; CRAIG MCDUGAL. DEFENDANT'S MOTION	
	GRANTED PER JOURNAL ENTRY. MN	
05/19/2006	MOTION TO VACATE DEFAULT JUDGMENT	
05/19/2006	ORDER SETTING HEARING ON MOTION TO VACATE DEFAULT	
	JUDGMENT	
06/07/2006	DEF'S MOTION TO COMPEL PETITIONER TO RESPOND TO	
	INTERROGATORIES, REQUEST FOR ADMISSION & REQUEST FOR	
	PRODUCTION OF DOCUMENTS & BRIEF IN SUPPORT	
06/08/2006	ORDER SETTING HEARING	
06/19/2006	SCHEDULING ORDER	
06/19/2006	MOTION TO VACATE JUDGMENT. PL: LLOYD PAYTON; DEF:	
	CORRINE O'DAY. MOTION TO VACATE GRANTED, SCHEDULING	
	ORDER FILED TODAY. MN	
07/05/2006	PLAINTIFF'S RESPONSE TO FIRST REQUEST FOR ADMISSIONS	
07/05/2006	PETITIONER'S ANSWER TO COUNTER-CLAIM	
07/05/2006	PETITIONER'S RESPONSE TO FIRST SET OF INTERROGATORIES	
07/05/2006	PETITIONER'S RESPONSE TO FIRST REQUEST FOR PRODUCTION	
	OF DOCUMENTS	
07/07/2006	MOTION TO COMPEL PASSED TO 7-14-06 @ 9:00 MN	
07/14/2006	DECISION. DEFAULT JOURNAL ENTRY SET ASIDE, SCHEDULING	
	ORDER AS FILED TODAY. MN	
07/14/2006	SCHEDULING ORDER	
09/05/2006	NOTICE OF CASE SETTING	
09/19/2006	MOTION TO WITHDRAW	
09/19/2006	ORDER ALLOWING WITHDRAWAL	
09/20/2006	ENTRY OF APPEARANCE	
09/20/2006	CM PL/W. STOUT; DEF/J. VELIE & C. O'DAY-HANAN	
	STRIKE BY AGREEMENT TA	
09/28/2006	APPLICATION TO WITHDRAW AS ATTORNEY OF RECORD	
09/28/2006	ORDER AUTHORIZING WITHDRAWAL OF CORRINE O'DAY-HANAN	
Total:		\$263.00

Date	Time	Calendar Events
06/18/2004	1:30P	Date Action: MOTION TO VACATE Completed : 06/18/2004 Code: X
06/18/2004	1:30P	Date Action: MOTION TO INTERVENE Completed : 06/18/2004 Code: X
07/26/2004	1:30P	Date Action: MOTION TO VACATE Completed : 07/22/2004 Code: X
07/26/2004	1:30P	Date Action: MOTION TO INTERVENE Completed : 07/22/2004 Code: X
08/06/2004	1:30P	Date Action: MOTION TO VACATE AND MOTION TO INTERVENE Completed : 08/06/2004 Co
03/14/2005	9:00A	Date Action: MOTION TO INTERVENE Completed : 03/11/2005 Code: X
03/28/2005	9:00A	Date Action: MOTION TO INTERVENE Completed : 03/28/2005 Code: X
08/17/2005	9:00A	Date Action: DISPOSITION DOCKET Completed : 08/17/2005 Code: X
09/06/2005	9:00A	Date Action: PRE TRIAL CONFERENCE Completed : 09/06/2005 Code: X
10/17/2005	9:00A	Date Action: DECLARATORY JUDGMENT Completed : 10/17/2005 Code: X
11/14/2005	9:00A	Date Action: DECLARATORY JUDGMENT Completed : 11/09/2005 Code: X
12/13/2005	1:30P	Date Action: DECLARATORY JUDGMENT Completed : 12/13/2005 Code: X
01/13/2006	1:30P	Date Action: ALL ISSUES PENDING Completed : 01/10/2006 Code: X
02/13/2006	1:30P	Date Action: ALL ISSUES PENDING Completed : 02/13/2006 Code: X
02/21/2006	9:00A	Date Action: DECISION Completed : 02/21/2006 Code: X
05/12/2006	9:00A	Date Action: MOTION FOR DEFAULT JUDGMENT Completed : 05/12/2006 Code: X
06/19/2006	1:30P	Date Action: MOTION TO VACATE JUDGEMENT Completed : 06/19/2006 Code: X
07/07/2006	9:00A	Date Action: MOTION TO COMPEL
07/14/2006	9:00A	Date Action: DECISION
09/20/2006	9:00A	Date Action: DISPOSITION DOCKET
01/17/2007	9:00A	Date Action: DISPOSITION DOCKET

Date	Receipts	Amount
05/20/2004	R2-033827 HARROLD, DALE	\$91.00
06/02/2004	R2-034612 SOUTHERN CHEROKEE TRIBAL NATIO	\$31.00
06/07/2004	R2-034935 HARROLD, DALE	\$91.00
10/14/2005	R2-071639 RIDGE, GARY	\$50.00
<b>Total:</b>		<b>\$263.00</b>

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DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
PHILADELPHIA PA 19255

DATE OF THIS NOTICE: 05-28-2002  
NUMBER OF THIS NOTICE: CP 575 E  
EMPLOYER IDENTIFICATION NUMBER: 81-0551895  
FORM: SS-4  
0534356826 0



SOUTHERN CHEROKEE TRIBAL NATION  
PO BOX 600  
WOBBONS FALLS OK 74470

FOR ASSISTANCE CALL US AT:  
1-800-829-1040

OR WRITE TO THE ADDRESS  
SHOWN AT THE TOP LEFT.

IF YOU WRITE, ATTACH THE  
STUB OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER (EIN)

Thank you for your Form SS-4, Application for Employer Identification Number (EIN). We assigned you EIN 81-0551895. This EIN will identify your business account, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

Use your complete name and EIN shown above on all federal tax forms, payments and related correspondence. If you use any variation in your name or EIN, it may cause a delay in processing and incorrect information in your account. It also could cause you to be assigned more than one EIN.

If you want to apply to receive a ruling or a determination letter recognizing your organization as tax exempt, and have not already done so, you should file Form 1023/1024, Application for Recognition of Exemption, with the IRS Ohio Key District Office. Publication 557, Tax Exempt Status for Your Organization, is available at most IRS offices and has details on how you can apply.

Keep this part for your records.

CP 575 E (Rev. 1-200

Return this part with any correspondence  
so we may identify your account. Please  
correct any errors in your name or address.

CP 575 E

0534356826

Your Telephone Number Best Time to Call  
( ) -

DATE OF THIS NOTICE: 05-28-2002  
EMPLOYER IDENTIFICATION NUMBER: 81-0551895  
FORM: SS-4

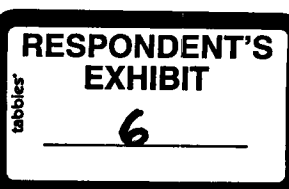
INTERNAL REVENUE SERVICE  
PHILADELPHIA PA 19255

SOUTHERN CHEROKEE TRIBAL NATION  
PO BOX 600  
WOBBONS FALLS OK 74470

# INDIAN AFFAIRS: LAWS AND TREATIES

## Vol. II, Treaties

Compiled and edited by Charles J. Kappler. Washington : Government Printing Office, 1904.



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### TREATY WITH THE CHEROKEE, 1866.

July 19, 1866. | 14 Stats., 799. | Ratified July 27, 1866. | Proclaimed Aug. 11, 1866

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Amnesty.
Confiscation laws repealed and former owners restored to their rights.
Improvements.
Cherokees, freed persons, and free negroes may elect to reside where.
>Proviso.
Those so electing to reside there may elect local officers, judges, etc.
Proviso.
Proviso.
Representation in national council.
Unequal laws.
Courts.
Process.
Proviso.
Proviso.
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Bounties and arrears for services as Indian volunteers; how to be paid.
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Execution.

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*Articles of agreement and convention at the city of Washington on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the United States, represented by Dennis N. Cooley, Commissioner of Indian Affairs, [and] Elijah Sells, superintendent of Indian affairs for the southern superintendency, and the Cherokee Nation of Indians, represented by its delegates, James McDaniel, Smith Christie, White Catcher, S. H. Bengé, J. B. Jones, and Daniel H. Ross—John Ross, principal chief of the Cherokees, being too unwell to join in these negotiations.*

#### **PREAMBLE.**

Whereas existing treaties between the United States and the Cherokee Nation are deemed to be insufficient, the said contracting parties agree as follows, viz:

#### **ARTICLE 1.**

The pretended treaty made with the so-called Confederate States by the Cherokee Nation on the seventh day of October, eighteen hundred and sixty-one, and repudiated by the national council of the Cherokee Nation on the eighteenth day of February, eighteen hundred and sixty-three, is hereby declared to be void.

#### **ARTICLE 2.**

Amnesty is hereby declared by the United States and the Cherokee Nation for all crimes and misdemeanors committed by one Cherokee on the person or property of another Cherokee, or of a citizen of the United States, prior to the fourth day of July, eighteen hundred and sixty-six; and no right of action arising out of wrongs committed in aid or in the suppression of the rebellion shall be prosecuted or maintained in the courts of the United States or in the courts of the Cherokee Nation.

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But the Cherokee Nation stipulate and agree to deliver up to the United States, or their duly authorized agent, any or all public property, particularly ordnance, ordnance stores, arms of all kinds, and quartermaster's stores, in their possession or control, which belonged to the United States or the so-called Confederate States, without any reservation.

### ARTICLE 3.

The confiscation laws of the Cherokee Nation shall be repealed, and the same, and all sales of farms, and improvements on real estate, made or pretended to be made in pursuance thereof, are hereby agreed and declared to be null and void, and the former owners of such property so sold, their heirs or assigns, shall have the right peaceably to re-occupy their homes, and the purchaser under the confiscation laws, or his heirs or assigns, shall be repaid by the treasurer of the Cherokee Nation from the national funds, the money paid for said property and the cost of permanent improvements on such real estate, made thereon since the confiscation sale; the cost of such improvements to be fixed by a commission, to be composed of one person designated by the Secretary of the Interior and one by the principal chief of the nation, which two may appoint a third in cases of disagreement, which cost so fixed shall be refunded to the national treasurer by the returning Cherokees within three years from the ratification hereof.

### ARTICLE 4.

All the Cherokees and freed persons who were formerly slaves to any Cherokee, and all free negroes not having been such slaves, who resided in the Cherokee Nation prior to June first, eighteen hundred and sixty-one, who may within two years elect not to reside northeast of the Arkansas River and southeast of Grand River, shall have the right to settle in and occupy the Canadian district southwest of the Arkansas River, and also all that tract of country lying northwest of Grand River, and bounded on the southeast by Grand River and west by the Creek reservation to the northeast corner thereof; from thence west on the north line of the Creek reservation to the ninety-sixth degree of west longitude; and thence north on said line of longitude so far that a line due east to Grand River will include a quantity of land equal to one hundred and sixty acres for each person who may so elect to reside in the territory above-described in this article: *Provided*, That that part of said district north of the Arkansas River shall not be set apart until it shall be found that the Canadian district is not sufficiently large to allow one hundred and sixty acres to each person desiring to obtain settlement under the provisions of this article.

### ARTICLE 5.

The inhabitants electing to reside in the district described in the preceding article shall have the right to elect all their local officers and judges, and the number of delegates to which by their numbers they may be entitled in any general council to be established in the Indian Territory under the provisions of this treaty, as stated in Article XII, and to control all their local affairs, and to establish all necessary police regulations and rules for the administration of justice in said district, not inconsistent with the constitution of the Cherokee Nation or the laws of the United States; *Provided*, The Cherokees residing in said district shall enjoy all the rights and privileges of other Cherokees who may elect to settle in said district as hereinbefore provided, and shall hold the same rights and privileges and be subject to the same liabilities as those who elect to settle in said district under the provisions of this treaty; *Provided also*, That if any such police regulations or rules be adopted which, in the opinion of the President, bear oppressively on any citizen of the nation, he may suspend the same. And all rules or regulations in said district, or in any other district of the nation, discriminating against the citizens of other districts, are prohibited, and shall be void.

**ARTICLE 6.**

The inhabitants of the said district hereinbefore described shall be entitled to representation according to numbers in the national council, and all laws of the Cherokee Nation shall be uniform throughout said nation. And should any such law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly or injuriously in said district, he is hereby authorized and empowered to correct such evil, and to adopt the means necessary to secure the impartial administration of justice, as well as a fair and equitable application and expenditure of the national funds as between the people of this and of every other district in said nation.

**ARTICLE 7.**

The United States court to be created in the Indian Territory; and until such court is created therein, the United States district court, the nearest to the Cherokee Nation, shall have exclusive original jurisdiction of all causes, civil and criminal, wherein an inhabitant of the district hereinbefore described shall be a party, and where an inhabitant outside of said district, in the Cherokee Nation, shall be the other party, as plaintiff or defendant in a civil cause, or shall be defendant or prosecutor in a criminal case, and all process issued in said district by any officer of the Cherokee Nation, to be executed on an inhabitant residing outside of said district, and all process issued by any officer of the Cherokee Nation outside of said district, to be executed on an inhabitant residing in said district, shall be to all intents and purposes null and void, unless indorsed by the district judge for the district where such process is to be served, and said person, so arrested, shall be held in custody by the officer so arresting him, until he shall be delivered over to the United States marshal, or consent to be tried by the Cherokee court: *Provided*, That any or all the provisions of this treaty, which make any distinction in rights and remedies between the citizens of any district and the citizens of the rest of the nation, shall be abrogated whenever the President shall have ascertained, by an election duly ordered by him, that a majority of the voters of such district desire them to be abrogated, and he shall have declared such abrogation: *And provided further*, That no law or regulation, to be hereafter enacted within said Cherokee Nation or any district thereof, prescribing a penalty for its violation, shall take effect or be enforced until after ninety days from the date of its promulgation, either by publication in one or more newspapers of general circulation in said Cherokee Nation, or by posting up copies thereof in the Cherokee and English languages in each district where the same is to take effect, at the usual place of holding district courts.

**ARTICLE 8.**

No license to trade in goods, wares, or merchandise *merchandise* shall be granted by the United States to trade in the Cherokee Nation, unless approved by the Cherokee national council, except in the Canadian district, and such other district north of Arkansas River and west of Grand River occupied by the so-called southern Cherokees, as provided in Article 4 of this treaty.

**ARTICLE 9.**

The Cherokee Nation having, voluntarily, in February, eighteen hundred and sixty-three, by an act of the national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation otherwise than in the punishment of crime, whereof the party shall have been duly convicted, in accordance with laws applicable to all the members of said tribe alike. They further agree that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of

native Cherokees: *Provided*, That owners of slaves so emancipated in the Cherokee Nation shall never receive any compensation or pay for the slaves so emancipated.

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#### ARTICLE 10.

Every Cherokee and freed person resident in the Cherokee Nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory.

#### ARTICLE 11.

The Cherokee Nation hereby grant a right of way not exceeding two hundred feet wide, except at stations, switches, waterstations, or crossing of rivers, where more may be indispensable to the full enjoyment of the franchise herein granted, and then only two hundred additional feet shall be taken, and only for such length as may be absolutely necessary, through all their lands, to any company or corporation which shall be duly authorized by Congress to construct a railroad from any point north to any point south, and from any point east to any point west of, and which may pass through, the Cherokee Nation. Said company or corporation, and their employes and laborers, while constructing and repairing the same, and in operating said road or roads, including all necessary agents on the line, at stations, switches, water tanks, and all others necessary to the successful operation of a railroad, shall be protected in the discharge of their duties, and at all times subject to the Indian intercourse laws, now or which may hereafter be enacted and be in force in the Cherokee Nation.

#### ARTICLE 12.

The Cherokees agree that a general council, consisting of delegates elected by each nation or tribe lawfully residing within the Indian Territory, may be annually convened in said Territory, which council shall be organized in such manner and possess such powers as hereinafter prescribed.

First. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said council, a census or enumeration of each tribe lawfully resident in said Territory shall be taken under the direction of the Commissioner of Indian Affairs, who for that purpose is hereby authorized to designate and appoint competent persons, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

Second. The first general council shall consist of one member from each tribe, and an additional member for each one thousand Indians, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory, and shall be selected by said tribes respectively, who may assent to the establishment of said general council; and if none should be thus formally selected by any nation or tribe so assenting, the said nation or tribe shall be represented in said general council by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank as recognized in tribal usage, in the same number and proportion as above indicated. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe assenting to the establishment of such council the number of members of such council to which they shall be entitled under the provisions of this article, and the persons entitled to represent said tribes shall meet at such time and place as he shall approve; but thereafter the time and place of the

sessions of said council shall be determined by its action: *Provided*, That no session in any one year shall exceed the term of thirty days: *And provided*, That special sessions of said council may be called by the Secretary of the Interior whenever in his judgment the interest of said tribes shall require such special session.

Third. Said general council shall have power to legislate upon matters pertaining to the intercourse and relations of the Indian tribes and nations and colonies of freedmen resident in said Territory; the arrest and extradition of criminals and offenders escaping from one tribe to another, or into any community of freedmen; the administration of

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justice between members of different tribes of said Territory and persons other than Indians and members of said tribes or nations; and the common defence and safety of the nations of said Territory.

All laws enacted by such council shall take effect at such time as may therein be provided, unless suspended by direction of the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States. Nor shall said council legislate upon matters other than those above indicated: *Provided, however*, That the legislative power of such general council may be enlarged by the consent of the national council of each nation or tribe assenting to its establishment, with the approval of the President of the United States.

Fourth. Said council shall be presided over by such person as may be designated by the Secretary of the Interior.

Fifth. The council shall elect a secretary, whose duty it shall be to keep an accurate record of all the proceedings of said council, and who shall transmit a true copy of all such proceedings, duly certified by the presiding officer of such council, to the Secretary of the Interior, and to each tribe or nation represented in said council, immediately after the sessions of said council shall terminate. He shall be paid out of the Treasury of the United States an annual salary of five hundred dollars.

Sixth. The members of said council shall be paid by the United States the sum of four dollars per diem during the term actually in attendance on the sessions of said council, and at the rate of four dollars for every twenty miles necessarily traveled by them in going from and returning to their homes, respectively, from said council, to be certified by the secretary and president of the said council.

#### **ARTICLE 13.**

The Cherokees also agree that a court or courts may be established by the United States in said Territory, with such jurisdiction and organized in such manner as may be prescribed by law: *Provided*, That the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty.

#### **ARTICLE 14.**

The right to the use and occupancy of a quantity of land not exceeding one hundred and sixty acres, to be selected according to legal subdivisions in one body, and to include their improvements, and not including the improvements of any member of the Cherokee Nation, is

hereby granted to every society or denomination which has erected, or which with the consent of the national council may hereafter erect, buildings within the Cherokee country for missionary or educational purposes. But no land thus granted, nor buildings which have been or may be erected thereon, shall ever be sold or [o]therwise disposed of except with the consent and approval of the Cherokee national council and the Secretary of the Interior. And whenever any such lands or buildings shall be sold or disposed of, the proceeds thereof shall be applied by said society or societies for like purposes within said nation, subject to the approval of the Secretary of the Interior.

#### **ARTICLE 15.**

The United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national

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fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect with native citizens. And should any such tribe, thus settling in said country, decide to preserve their tribal organizations, and to maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee Nation, they shall have a district of country set off for their use by metes and bounds equal to one hundred and sixty acres, if they should so decide, for each man, woman, and child of said tribe, and shall pay for the same into the national fund such price as may be agreed on by them and the Cherokee Nation, subject to the approval of the President of the United States, and in cases of disagreement the price to be fixed by the President.

And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country, and thence afterwards they shall enjoy all the rights of native Cherokees. But no Indians who have no tribal organizations, or who shall determine to abandon their tribal organizations, shall be permitted to settle east of the 96° of longitude without the consent of the Cherokee national council, or of a delegation duly appointed by it, being first obtained. And no Indians who have and determine to preserve the tribal organizations shall be permitted to settle, as herein provided, east of the 96° of longitude without such consent being first obtained, unless the President of the United States, after a full hearing of the objections offered by said council or delegation to such settlement, shall determine that the objections are insufficient, in which case he may authorize the settlement of such tribe east of the 96° of longitude.

#### **ARTICLE 16.**

The United States may settle friendly Indians in any part of the Cherokee country west of 96°, to be taken in a compact form in quantity not exceeding one hundred and sixty acres for each member of each of said tribes thus to be settled; the boundaries of each of said districts to be distinctly marked, and the land conveyed in fee-simple to each of said tribes to be held in common or by their members in severalty as the United States may decide.

Said lands thus disposed of to be paid for to the Cherokee Nation at such price as may be agreed on between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President.

The Cherokee Nation to retain the right of possession of and jurisdiction over all of said country west of 96° of longitude until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied.

#### ARTICLE 17.

The Cherokee Nation hereby cedes, in trust to the United States, the tract of land in the State of Kansas which was sold to the Cherokees by the United States, under the provisions of the second article of the treaty of 1835; and also that strip of the land ceded to the nation by the fourth article of said treaty which is included in the State of Kansas, and the Cherokees consent that said lands may be included in the limits and jurisdiction of the said State.

The lands herein ceded shall be surveyed as the public lands of the United States are surveyed, under the direction of the Commissioner of the General Land-Office, and shall be appraised by two disinterested persons, one to be designated by the Cherokee national council and one by the Secretary of the Interior, and, in case of disagreement,

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by a third person, to be mutually selected by the aforesaid appraisers. The appraisement to be not less than an average of one dollar and a quarter per acre, exclusive of improvements.

And the Secretary of the Interior shall, from time to time, as such surveys and appraisements are approved by him, after due advertisements for sealed bids, sell such lands to the highest bidders for cash, in parcels not exceeding one hundred and sixty acres, and at not less than the appraised value: *Provided*, That whenever there are improvements of the value of fifty dollars made on the lands not being mineral, and owned and personally occupied by any person for agricultural purposes at the date of the signing hereof, such person so owning, and in person residing on such improvements, shall, after due proof, made under such regulations as the Secretary of the Interior may prescribe, be entitled to buy, at the appraised value, the smallest quantity of land in legal subdivisions which will include his improvements, not exceeding in the aggregate one hundred and sixty acres; the expenses of survey and appraisement to be paid by the Secretary out of the proceeds of sale of said land: *Provided*, That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said lands not occupied by actual settlers at the date of the ratification of this treaty, not exceeding one hundred and sixty acres to each person entitled to pre-emption under the pre-emption laws of the United States, in a body, to any responsible party, for cash, for a sum not less than one dollar per acre.

#### ARTICLE 18.

That any lands owned by the Cherokees in the State of Arkansas and in States east of the Mississippi may be sold by the Cherokee Nation in such manner as their national council may prescribe, all such sales being first approved by the Secretary of the Interior.

#### ARTICLE 19.

All Cherokees being heads of families residing at the date of the ratification of this treaty on any of the lands herein ceded, or authorized to be sold, and desiring to remove to the reserved country, shall be paid by the purchasers of said lands the value of such improvements, to be ascertained and appraised by the commissioners who appraise the lands, subject to the

approval of the Secretary of the Interior; and if he shall elect to remain on the land now occupied by him, shall be entitled to receive a patent from the United States in fee-simple for three hundred and twenty acres of land to include his improvements, and thereupon he and his family shall cease to be members of the nation.

And the Secretary of the Interior shall also be authorized to pay the reasonable costs and expenses of the delegates of the southern Cherokees.

The moneys to be paid under this article shall be paid out of the proceeds of the sales of the national lands in Kansas.

#### ARTICLE 20.

Whenever the Cherokee national council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them, at the expense of the United States.

#### ARTICLE 21.

It being difficult to learn the precise boundary line between the Cherokee country and the States of Arkansas, Missouri, and Kansas, it is agreed that the United States shall, at its own expense, cause the same to be run as far west as the Arkansas, and marked by permanent and conspicuous monuments, by two commissioners, one of whom shall be designated by the Cherokee national council.

#### ARTICLE 22.

The Cherokee national council, or any duly appointed delegation thereof, shall have the privilege to appoint an agent to examine the accounts of the nation with the Government of the United States at such time as they may see proper, and to continue or discharge

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such agent, and to appoint another, as may be thought best by such council or delegation; and such agent shall have free access to all accounts and books in the executive departments relating to the business of said Cherokee Nation, and an opportunity to examine the same in the presence of the officer having such books and papers in charge.

#### ARTICLE 23.

All funds now due the nation, or that may hereafter accrue from the sale of their lands by the United States, as hereinbefore provided for, shall be invested in the United States registered stocks at their current value, and the interest on all said funds shall be paid semi-annually on the order of the Cherokee Nation, and shall be applied to the following purposes, to wit: Thirty-five per cent. shall be applied for the support of the common-schools of the nation and educational purposes; fifteen per cent. for the orphan fund, and fifty per cent. for general purposes, including reasonable salaries of district officers; and the Secretary of the Interior, with the approval of the President of the United States, may pay out of the funds due the nation, on the order of the national council or a delegation duly authorized by it, such amount as he may deem necessary to meet outstanding obligations of the Cherokee Nation, caused by the suspension of the payment of their annuities, not to exceed the sum of one hundred and fifty thousand dollars.

#### ARTICLE 24.

As a slight testimony for the useful and arduous services of the Rev. Evan Jones, for forty years a missionary in the Cherokee Nation, now a cripple, old and poor, it is agreed that the sum of three thousand dollars be paid to him, under the direction of the Secretary of the Interior, out of any Cherokee fund in or to come into his hands not otherwise appropriated.

#### ARTICLE 25.

A large number of the Cherokees who served in the Army of the United States having died, leaving no heirs entitled to receive bounties and arrears of pay on account of such service, it is agreed that all bounties and arrears for service in the regiments of Indian United States volunteers which shall remain unclaimed by any person legally entitled to receive the same for two years from the ratification of this treaty, shall be paid as the national council may direct, to be applied to the foundation and support of an asylum for the education of orphan children, which asylum shall be under the control of the national council, or of such benevolent society as said council may designate, subject to the approval of the Secretary of the Interior.

#### ARTICLE 26.

The United States guarantee to the people of the Cherokee Nation the quiet and peaceable possession of their country and protection against domestic feuds and insurrections, and against hostilities of other tribes. They shall also be protected against inter[r]uptions or intrusion from all unauthorized citizens of the United States who may attempt to settle on their lands or reside in their territory. In case of hostilities among the Indian tribes, the United States agree that the party or parties commencing the same shall, so far as practicable, make reparation for the damages done.

#### ARTICLE 27.

The United States shall have the right to establish one or more military posts or stations in the Cherokee Nation, as may be deemed necessary for the proper protection of the citizens of the United States lawfully residing therein and the Cherokee and other citizens of the Indian country. But no sutler or other person connected therewith, either in or out of the military organization, shall be permitted to introduce any spirit[u]ous, vinous, or malt liquors into the Cherokee Nation, except the medical department proper, and by them only for strictly medical purposes. And all persons not in the military service of the United States, not citizens of the Cherokee Nation, are to be prohibited from coming into the Cherokee Nation, or remaining in the same, except as herein otherwise provided; and

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it is the duty of the United States Indian agent for the Cherokees to have such persons, not lawfully residing or sojourning therein, removed from the nation, as they now are, or hereafter may be, required by the Indian intercourse laws of the United States.

#### ARTICLE 28.

The United States hereby agree to pay for provisions and clothing furnished the army under Appotholehala in the winter of 1861 and 1862, not to exceed the sum of ten thousand dollars, the accounts to be ascertained and settled by the Secretary of the Interior.

#### ARTICLE 29.

The sum of ten thousand dollars or so much thereof as may be necessary to pay the expenses of the delegates and representatives of the Cherokees invited by the Government to visit

Washington for the purposes of making this treaty, shall be paid by the United States on the ratification of this treaty.

#### ARTICLE 30.

The United States agree to pay to the proper claimants all losses of property by missionaries or missionary societies, resulting from their being ordered or driven from the country by United States agents, and from their property being taken and occupied or destroyed by United States troops, not exceeding in the aggregate twenty thousand dollars, to be ascertained by the Secretary of the Interior.

#### ARTICLE 31.

All provisions of treaties heretofore ratified and in force, and not inconsistent with the provisions of this treaty, are hereby re-affirmed and declared to be in full force; and nothin herein shall be construed as an acknowledgment by the United States, or as a relinquishment by the Cherokee Nation of any claims or demands under the guarantees of former treaties, except as herein expressly provided.

In testimony whereof, the said commissioners on the part of the United States, and the said delegation on the part of the Cherokee Nation, have hereunto set their hands and seals at the city of Washington, this *ninth* [nineteenth] day of July, A. D. one thousand eight hundred and sixty-six.

*D. N. Cooley, Commissioner of Indian Affairs.*

*Elijah Sells, Superintendent of Indian Affairs.*

*Smith Christie,*

*White Catcher,*

*James McDaniel,*

*S. H. Bengé,*

*Danl. H. Ross,*

*J. B. Jones.*

**Delegates of the Cherokee Nation, appointed by Resolution of the National Council.**

In presence of—

*W. H. Watson,*

*J. W. Wright.*

Signatures witnessed by the following-named persons, the following interlineations being made before signing: On page 1st the word "the" interlined, on page 11 the word "the" struck out, and to said page 11 sheet attached requiring publication of laws; and on page 34th the word "ceded" struck out and the words "neutral lands" inserted. Page 47½ added relating to expenses of treaty.

*Thomas Ewing, jr.*

*Wm. A. Phillips,*

*J. W. Wright.*

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PUBLISH

## UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

**FILED**  
 United States Court of Appeals  
 Tenth Circuit

NOV 16 2004

**PATRICK FISHER**

Clerk

 CHEROKEE NATION OF OKLAHOMA, on behalf  
 of all its members,

Plaintiff-Appellant,

v.

No. 03-5055

 GALE NORTON, Secretary of the United States  
 Department of the Interior, AURENE MARTIN,  
 Acting Assistant Secretary of the United States  
 Department of the Interior, and DELAWARE TRIBE  
 OF INDIANS, in their official capacities,

Defendants-Appellees.

## APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

(D.C. No. 98-CV-903-H)

241 F. Supp. 2d 1368

Lloyd B. Miller of Sonosky, Chambers, Sachse, Miller & Munson, LLP, Anchorage, Alaska (Arthur Lazarus, Jr. and Melanie B. Osborne of Sonosky, Chambers, Sachse, Miller & Munson, LLP, Anchorage, Alaska; Julian K. Fite and John E. Parris of the Cherokee Nation Department of Justice, Tahlequah, Oklahoma, with him on the briefs) for Appellant Cherokee Nation of Oklahoma.

David C. Shilton of the United States Department of Justice, Washington D.C. (Katherine J. Barton, Attorney, United States Department of Justice, Washington, D.C., Kelly A. Johnson, Acting Assistant Attorney General, Washington D.C., Thomas L. Sansonetti, Assistant Attorney General, Washington D.C., David E. O'Meilia, United States Attorney, Tulsa, Oklahoma, Loretta Radford, Assistant United States Attorney, Tulsa, Oklahoma, and Barbra N. Coen, of counsel, Office of the Solicitor, United States Department of the Interior, Washington D.C., with him on the briefs) for Federal Appellees.

Gina Carrigan-St.Clair of the Carrigan Law Offices, Tulsa, Oklahoma (Philip Baker-Shenk and Wilda Wahpepah, Dorsey & Whitney, LLP, Washington D.C., and Skip Durocher, Dorsey & Whitney LLP, Minneapolis, Minnesota, with her on the briefs) for Appellee Delaware Tribe of Indians.

Before SEYMOUR, BALDOCK, and HARTZ, Circuit Judges.

BALDOCK, Circuit Judge.

The Cherokee Nation of Oklahoma ("Cherokee Nation") and Delaware Tribe of Indians ("Delawares") entered into a contract pursuant to a treaty negotiated between the Cherokee Nation and the United States Government. The Supreme Court has twice interpreted that contract. We must decide in this case whether the Department of Interior's ("DOI") interpretation of that contract and concomitant decision to extend Federal recognition to the Delawares is contrary to the Supreme Court's reading of the same document.

I. The law governing Federal recognition of an Indian tribe is, today, clear. The Federally Recognized Indian Tribe List Act of 1994 provides Indian tribes may be recognized by: (1) an "Act of Congress;" (2) "the administrative procedures set forth in part 83 of the Code of Federal Regulations[;]" or (3) "a decision of a United States court." Pub. L. No. 103-454, § 103(3), 108 Stat. 4791; see also United Tribe of Shawnee Indians v. United States, 253 F.3d 543, 547-48 (10th Cir. 2001). A recognized tribe is placed on the DOI's "list of recognized tribes[.]" 25 U.S.C. §§ 479a(3), 479a-1; 25 C.F.R. § 83.5(a).

The Delawares had never been on the list prior to this lawsuit. The Delawares began a quest for Federal recognition in 1992. They submitted a letter to the DOI expressing an intent to petition for Federal acknowledgment under the "Part 83 procedures." See 25 C.F.R. §§ 83.1, 83.4. The DOI informed the Delawares it would not consider their petition. The agency explained the "Delawares have not existed as an independent political identity since 1867, and have been absorbed into the Cherokee Nation of Oklahoma for general governmental purposes since that time." The Delawares, in response, requested instructions for filing an appeal. The DOI thereafter reaffirmed its position, but "clarified" its previous non-appealable advisory letter did not prevent the Delawares from petitioning under the Part 83 procedures.

The Delawares never formally petitioned for acknowledgment. Instead, they requested the DOI to "reconsider and retract" the agency's position, as expressed in a 1979 letter, that it would only engage in government-to-government relations with the Delawares through the Cherokee Nation. The agency conducted a "legal review" of the situation at the Delawares' behest. The DOI concluded the 1979 position should be retracted and published a "notice of intent" to do the same. See 61 Fed. Reg. 33,534-35 (June 27, 1996). The DOI elected not to follow the Part 83 procedures because they do not apply to "already acknowledged" tribes; and under the agency's new position, the Delawares had been acknowledged since 1867. See 25 C.F.R. § 83.3(b). The agency issued its final decision, after notice and comment, in September 1996. See 61 Fed. Reg. 50,862-63 (Sept. 27, 1996). The final decision declared "the Delaware Tribe of Indians is a tribal entity recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of its status as an Indian Tribe." Id. at 50,863.

On October 2, 1996, the Cherokee Nation sued the DOI. Cherokee Nation of Okla. v. Babbitt, 944 F. Supp. 974 (D.D.C. 1996). The Nation alleged the agency violated the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, when it extended recognition to the Delawares. The district court, upon the DOI's motion, dismissed the suit because the Delawares were an indispensable party that could not be joined because of sovereign immunity. Cherokee Nation, 944 F. Supp. at 986. The D.C. Circuit reversed, holding the Delawares could not assert sovereign immunity because they relinquished their tribal sovereignty when they entered into an agreement with the Cherokee Nation in 1867. Cherokee Nation of Okla. v. Babbitt, 117 F.3d 1489, 1503 (D.C. Cir. 1997). The D.C. Circuit, however, limited its holding to the joinder issue and remanded the case for the district court to decide the "proper interpretation of the 1867 agreement with the Delaware Tribe[]" as a party to the proceedings and in light of the full administrative record[.]"<sup>(\*)</sup> Id. at 1503 n.15. On remand, the district court transferred the case to the Northern District of Oklahoma because it lacked personal jurisdiction over the Delawares.

There, the district court extended "great deference" to the DOI and concluded its retraction of the 1979 letter did not violate the APA. Cherokee Nation of Okla. v. Norton, 241 F. Supp. 2d 1368, 1373-74 (N.D. Okla. 2002). The court reasoned the Delawares were a federally recognized tribe prior to 1979 because (1) a claims statute appropriated funds to the "Delaware Tribe of Indians," and (2) "the Supreme Court explicitly and unambiguously declared that the Delaware Tribe of Indians was a federally recognized Indian tribe in Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977)." Id. at 1372-73. The court therefore did not consider the initial 1867 agreement entered into between the Cherokee Nation and Delawares. Id. at 1372.

The Cherokee Nation appeals. We have jurisdiction, 28 U.S.C. § 1291, and "afford no particular deference to the district court's review of [the] agency['s] action; our review of the administrative record pertaining to the challenged action is independent." Pennaco Energy Inc. v. United States Dep't of the Interior, 377 F.3d 1147, 1156 (10th Cir. 2004) (internal quotations and citation omitted). Because the DOI's final decision is contrary to Supreme Court precedent and the Federally Recognized Indian Tribe List Act, we reverse.

## II.

The APA requires an agency to articulate a satisfactory explanation for its action. Kansas v. United States, 249 F.3d 1213, 1228-29 (10th Cir. 2001). Agency action *must* be upheld, if at all, on the basis the agency articulated. Federal Power Comm'n v. Texaco Inc., 417 U.S. 380, 397 (1974); Pennaco Energy Inc., 377 F.3d at 1157. An agency's action, on the other hand, may be set aside under the APA if it is arbitrary, capricious, an abuse of discretion, or contrary to law. 5 U.S.C. § 706(2)(A). "And the Act has been interpreted . . . to require agencies, on pain of being found to have acted arbitrarily and capriciously, to comply with their own regulations [.]" Miami Nation of Indians of Ind., Inc. v. United States Dep't of the Interior, 255 F.3d 342, 348 (7th Cir. 2001); Utahns for Better Transp. v. United States Dep't of Transp., 305 F.3d 1152, 1165 (10th Cir. 2002). Furthermore, although the APA's arbitrary and capricious standard is ordinarily a deferential one, see id. at 1164, such deference is not unfettered nor always due. See General Dynamics Land Sys. Inc. v. Cline, 540 U.S. 581, 124 S. Ct. 1236, 1248 (2004) (explaining no deference is owed to a clearly wrong agency interpretation); Adams Fruit Co., Inc. v. Barrett, 494 U.S. 638, 649-50 (1990) *superceded by* 29 U.S.C. § 1854 (explaining a precondition to agency deference is a congressional delegation of administrative authority); Watt v. Alaska, 451 U.S. 259, 273 (1981) (explaining an agency interpretation that conflicts with an earlier interpretation is entitled to considerably less deference than a consistently held position).

In this case, the DOI based its final decision on a "legal analysis of the pertinent treaties and agreements as well as a review of [its] administrative practice." 61 Fed. Reg. at 50,863. More specifically, the agency's recognition of the Delawares was based solely on its *analysis of the treaties and agreements* entered into by the Cherokee Nation and Delawares in the 1860s. The DOI's "review" of its administrative practice over the next century was simply to confirm the Delawares' status. The DOI does *not* maintain its administrative practice from 1867 to 1979 "reconstituted" or "restored" the Delawares as a tribe.<sup>(2)</sup> The resolution of this case thus turns on the status of the Delawares under the treaties and the agreements entered into by the Cherokees and Delawares in the 1860s. We do not afford any deference to the DOI's position on this issue because Congress did not give it the discretion to administer those treaties and agreements. Adams Fruit Co., 494 U.S. at 649; Citizen Band of Potawatomi Indian Tribe of Okla. v. Collier, 142 F.3d 1325, 1332 (10th Cir. 1998); see also Cherokee Nation, 117 F.3d at 1499. We now turn to those treaties and agreements.

## III.

The history of the Delawares' tortured migration westward has been told elsewhere, see Weeks, 430 U.S. at 75-79 & n.2, and we need not repeat it. Suffice it to say, the "main body" of Delawares resided on a reservation in Kansas in the 1850s. Id. at 77. Notwithstanding promises to the contrary, see id., the United States sought to move the Delawares again in 1866. To that end, the United States entered into a treaty with the Delawares. Treaty with the Delawares, July 4, 1866, U.S.-Del. Indians, 14 Stat. 793 ("1866 Delaware Treaty"). The 1866 Delaware Treaty provided, among other things, the Delawares could purchase from the United States "a tract

of land ceded to the Government by the Choctaws and Chickasaws, the Creeks, or the Seminoles, or which may be ceded by the Cherokees in the Indian country [now Oklahoma], to be selected by the Delawares in one body in as compact form as practicable[.]"

The United States subsequently entered into a treaty with the Cherokee Nation. Treaty with the Cherokee, July 19, 1866, U.S.-Cherokee Nation, 14 Stat. 799 ("1866 Cherokee Treaty"). Article 15 of the 1866 Cherokee Treaty provided an "incorporation option" and "preservation option" for friendly Indians settling upon Cherokee lands:

The United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz:

[Incorporation Option] Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be *incorporated into* and ever after remain a part of the Cherokee Nation, on equal terms in every respect with native citizens.

[Preservation Option] And should any such tribe, thus settling in said country, decide to preserve their tribal organizations, and to maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee Nation, they shall have a *district of country set off for their use by metes and bounds* equal to one hundred and sixty acres, if they should so decide, for each man, woman, and child of said tribe, and

[1] shall pay for the same into the national fund such price as may be agreed on by them and the Cherokee Nation, subject to the approval of the President of the United States . . . .

[2] And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country, and thence afterwards they shall enjoy all the rights of native Cherokees.

(emphasis added).

On April 8, 1867, the Cherokee Nation entered into "Articles of Agreement" with the Delawares ("1867 Agreement") pursuant to Article 15 of the 1866 Cherokee Treaty. The preamble to the 1867 Agreement provides the Cherokee Nation and Delawares held a "full and free conference . . . looking to a location of the Delawares upon the Cherokee lands, *and their consolidation* with said Cherokee Nation[.]" (emphasis added). The agreement provided for both conditions.

The Cherokee Nation first "agree[d] to sell to the Delawares, for their *occupancy*, a quantity of land east of the line of the 96° west longitude, in the aggregate equal to 160 acres of land for each [registered] individual of the Delaware Tribe . . . [with] the selections of the lands to be purchased . . . made by said Delawares in *any part* of the Cherokee reservation east of said line of 96°[.]" <sup>(3)</sup> (emphasis added). The Delawares paid \$157,600 (one dollar per acre) for such occupancy rights and a preferred allotment position. The "Delawares further agree[d], that there shall be paid . . . a sum of money, which shall sustain the same proportion to the existing Cherokee National fund, that the number of Delawares registered as above mentioned, and removing to the Indian country, sustains to the whole number of Cherokees residing in the Cherokee Nation." The Delawares paid \$121,824.28 into the Cherokee national fund based on the formula recited in the agreement. The 1867 Agreement concluded:

On fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe, registered as above provided, *shall* become members of the Cherokee Nation, with the same rights and immunities, and the same participation (and no other,) in the national funds, as *native* Cherokees, save as hereinbefore provided. And the children hereafter born of *such Delawares so incorporated* into the Cherokee Nation, shall in all respects be regarded as *native Cherokees*.

(emphasis added).

The 1867 Agreement was "subject to the approval of the President of the United States[.]" The Secretary of the DOI, then Orville H. Browning, transmitted the agreement to the President. Secretary Browning's transmittal letter explained the agreement "provid[ed] for *uniting the two tribes*, as contemplated by the Cherokee Treaty of July 19th 1866" and "recommend[ed] that it be approved." (emphasis added). President Andrew Johnson approved the agreement. The registered Delawares fulfilled all of the stipulations in the 1867 Agreement and moved onto selected 160-acre tracts scattered throughout the Nation.

#### IV.

The genesis of the present case is the DOI's 1996 decision to extend Federal recognition to the Delawares based on its legal analysis of the 1866 Cherokee Treaty and 1867 Agreement. The agency concluded the agreement evidenced the Delawares' election of the treaty's "preservation option" because it required two payments (whereas the incorporation option only required one) and Delawares made two payments (\$157,600 and \$121,824) to the Cherokee Nation. The DOI therefore maintains the Delawares preserved their tribal identity when they moved to the Cherokee Nation in the 1860s.

We do not begin with a clean slate. In fact, *every court* to consider the actual terms of the 1866 Cherokee Treaty and 1867 Agreement has explicitly or implicitly rejected the DOI's reading of the agreement. See Journeycake v. Cherokee Nation, 28 Ct. Cl. 281, 311 (1893) *aff'd as modified* 155 U.S. 196 (1894) (holding that under the 1867 Agreement "two independent bodies politic united and became one, the lesser, according to its terms, being merged into the greater."); Cherokee Nation v. Journeycake, 155 U.S. 196, 210-11 (1894) (holding that under the 1867 Agreement the "Delawares became incorporated into the Cherokee Nation, and are members and citizens thereof[.]"); Delaware Indians v. Cherokee Nation, 38 Ct. Cl. 234, 256 (1903) *aff'd* 193 U.S. 127 (1904) (holding that "[b]y the introduction and admission of the Delawares as part of the Cherokee Nation they became a part of the people of such nation and bound in common with the Cherokees by the political power of the nation[.]"); Delaware Indians v. Cherokee Nation, 193 U.S. 127, 135 (1904) (reaffirming the purpose of the 1867 Agreement was "to incorporate the registered Delawares into the Cherokee Nation, with full participation in the political and property rights of citizens of that nation."); Cherokee Nation, 944 F. Supp. at 982 *rev'd on other grounds* 117 F.3d 1489 (D.C. Cir. 1997) (holding the "Delaware[s] settled in Cherokee Nation territory pursuant to the first provision of Article 15, under which the settling Delaware became full and equal Cherokee Nation citizens."); Cherokee Nation, 117 F.3d at 1503 (holding that "by entering into the 1867 Agreement the Delaware Tribe of Indians relinquished its tribal identity or sovereignty in relation to the Cherokee Nation."). We now join them.

#### A.

In Journeycake, 155 U.S. at 196, the Supreme Court considered a dispute between the Delawares and Cherokee Nation over the proper distribution of national funds. The Cherokee National Council had directed certain rent proceeds be distributed to "native Cherokees," to the exclusion of Delawares. The Delawares filed suit in the court of claims, alleging the Cherokee Nation's discriminatory distribution of the rental proceeds violated the 1867 Agreement.<sup>(4)</sup> The case therefore "hinge[d] on the status of the individual Delawares as members and citizens of the Cherokee Nation, and the rights secured to them by the agreement of April 8, 1867." Id. at 204.

The Court, after reviewing the 1866 Cherokee Treaty and 1867 Agreement, easily concluded that because "the registered Delawares have become incorporated into the Cherokee Nation, and are members and citizens thereof, it follows necessarily that they are, equally with the native Cherokees, the owners of, and entitled to share in the profits and proceeds of, [the leased] lands." *Id.* at 210-11. The Court rejected the Cherokee Nation's arguments to the contrary based on the "plain import of the language used in the [1867] agreement[.]" *Id.* at 216. The agreement's language compelled the Court to "conclude that by such agreement the Delawares became incorporated into the Cherokee Nation, became members thereof, and, as such, entitled equally with the native Cherokees to all their rights in the reservation and [leased lands]." *Id.*

In so holding, the Court considered evidence of the Delawares' two payments to the Cherokee Nation, *id.* at 203, and specifically analyzed the Delawares' purchase of land occupancy rights. *Id.* at 212-15. The Court nevertheless found the 1867 Agreement expressed the parties' intent to incorporate the Delawares for two reasons. First, the parties did not provide for the "setting apart of a distinct body of land in any portion of the reservation for the Delaware tribe[.]" *Id.* at 205. The Court explained the Delawares' failure to purchase a "distinct body of lands" was inconsistent with the settlement of "*tribes as tribes* within the limits of the Cherokee Nation." *Id.* at 213 (emphasis added). Second, the Delawares did not purchase their lands in fee simple, *see id.* at 212, 214-15, but instead acquired occupancy rights in kind with all Cherokees and a preferential allotment position. *Id.* at 213. "All this was in the line of the expressed thought of a consolidation of the[] Delawares with, and absorption of them into, the Cherokee Nation as individual members thereof." *Id.*

Subsequently, in *Delaware Indians*, 193 U.S. at 127, "the Delaware Indians residing in the Cherokee Nation, *as a tribe and individually*, . . . su[ed] . . . for the purpose of determining the right of the Delaware Indians in and to the lands and funds of [the Cherokee] nation under the contract and agreement . . . dated April 8, 1867." *Id.* at 129 (emphasis added) (internal quotation and citations omitted); *see also* Act of June 28, 1898, Chap. 517, § 25, 30 Stat. 495, at 504. The Court first rejected the Delawares' claim that the 1867 Agreement secured to them, as a tribe, their selected lands east of the 96° meridian. *Delaware Indians*, 193 U.S. at 134-35. The Delawares' argument failed because it was contrary to the Court's *holding* in *Journeycake* and inconsistent with their purchase of occupancy rights, which were "conferred *not* upon the Delaware Nation, but upon certain registered Delawares who [were] incorporated into the Cherokee Nation." *Id.* at 135 (emphasis added).

The Court also rejected the Delawares' argument that they individually owned their selected tracts in fee simple. The Court explained the adult Delawares had only purchased occupancy rights in the Cherokee lands under the 1867 Agreement. Furthermore, the agreement provided "the children hereafter born of such Delawares so incorporated into the Cherokee Nation shall, in all respects, be regarded as native Cherokees." *Id.* at 138. The Court found

[t]his provision is *utterly inconsistent* with the grant of an estate in the lands to survive the 'occupancy' of the registered Delawares. Such children are to have the rights of native Cherokees, and no more. Their parents were incorporated into the Cherokee Nation with certain specific rights; the children were to stand upon an equality with their adopted brethren of the Cherokee blood.

*Id.* (emphasis added). The Court accordingly held the Delawares only obtained life estates in their lands selected under the 1867 Agreement. *Id.* at 143.

The Delawares nevertheless insisted the 1867 Agreement "should not be literally enforced in view of the understanding of the parties[]" and sought to introduce parol evidence. *Id.* at 140. The Court, however, found the contract unambiguous and rejected the Delawares' resort to parol evidence. *Id.* at 140-42. The Court explained "no room" existed in the case to "depart[] from the familiar rules of law protecting written agreements from the uncertainties of parol testimony." *Id.* at 141. "In light of the circumstances and the language used in the writing, its construction [was] not rendered difficult because of latent ambiguities." *Id.* The Delawares were therefore entitled to their occupancy and preferential allotment rights, but "[i]n all other respects *the Cherokee citizens, whether of Delaware or Cherokee blood*, should be given equal rights in the lands and funds of the

Cherokee Nation." Id. at 146 (emphasis added).<sup>(5)</sup>

## B.

Based on the foregoing, the DOI's conclusion the Delawares preserved their tribal identity under the 1866 Cherokee Treaty and 1867 Agreement is *clearly* contrary to Supreme Court precedent. The "rights adjudicated" in Journeycake and Delaware Indians "turned upon the construction of the agreement of April 8, 1867, and its nature and the history of the events which led up to its execution[.]" Delaware Indians, 193 U.S. at 134. The Court held the unambiguous language of the 1867 Agreement provided for the Delawares' incorporation into the Cherokee Nation with their children taking only the same rights as other citizens. Id. at 143; Journeycake, 155 U.S. at 216. We are "bound by the Supreme Court's interpretation of that Agreement in Journeycake and Delaware Indians." Cherokee Nation, 117 F.3d at 1500; see also State Oil Co. v. Kahn, 522 U.S. 3, 20 (1997). "An agency also *must* conform its conduct to a decision of the Supreme Court in all future cases, even if the agency believes that the Court was wrong." 1 Richard J. Pierce, Jr., Administrative Law Treatise § 2.9, at 129 (2002) (emphasis added).

Our task is therefore simple. Although we seek to avoid engaging in a repetitive analysis of the 1866 Cherokee Treaty and 1867 Agreement an analysis the Supreme Court has twice engaged in we again explain why the Delawares did not preserve their tribal identity under those documents. The 1866 Cherokee Treaty provided for the settlement of Indians within the Cherokee Nation. The terms the tribes agreed upon for such settlement, however, had to be "consistent" with one of the options provided in Article 15 of the 1866 Cherokee Treaty. The unambiguous language of the 1867 Agreement, including the provisions for the Delawares' two payments, is consistent with the Delawares' selection of the incorporation option of Article 15. Specifically, the Delawares made a proportional payment of \$121,824 into the national fund and provided they were consolidating with and incorporating into the Cherokee Nation. That the Delawares made an additional payment of \$157,600 for land occupancy and preferential allotment rights is not inconsistent with the incorporation option. In contrast, and for the reasons detailed below, the language of the agreement and the nature of its execution are inconsistent with Article 15's preservation option.

To begin, the 1867 Agreement describes the Delawares consolidation with or incorporation into the Cherokee Nation three times. We agree with the Supreme Court (as we must) and the D.C. Circuit that the agreement's language is unambiguous. Delaware Indians, 193 U.S. at 141; Cherokee Nation, 117 F.3d at 1501. "Consolidation" and "incorporation" carried the same meanings in 1867 as they do today: to unite. Compare Webster's Dictionary of the English Language 279 (consolidate), 677 (incorporate) (1864) with Webster's Third New International Dictionary 484 (consolidate), 1145 (incorporate) (1981). The DOI nevertheless concluded "the Agreement uses the language 'consolidation' in the context of the physical location of the Delaware from Kansas to Cherokee country, not in the context of governmental purposes." The agency's reading is, however, inconsistent with the plain language of the 1867 Agreement, which provides the parties were "looking to a location of the Delawares upon the Cherokee lands, *and* their consolidation with said Cherokee Nation [.]" (emphasis added). With respect to "incorporation," the DOI suggests the language can be read consistent with Article 15's preservation option. Perhaps. The problem is the Supreme Court specifically rejected the DOI's reading in Delaware Indians. There, the Court explained the "Delawares *were made part of the Cherokee Nation*" and became "a *component part*" of the nation "on equal terms with other citizens." Delaware Indians, 193 U.S. at 144 (emphasis added). Furthermore, the agreement provides Delaware children shall be regarded as *native Cherokees*. Such a provision is wholly inconsistent with the "preservation" of tribal identity. See Cherokee Nation, 117 F.3d at 1502.

Next, as the Supreme Court explained, the 1867 Agreement is important for what it does not contain. Article 15's preservation option contains the mandatory condition that tribes settling under it "*shall* have a district of country set off for their use by metes and bounds[.]" (emphasis added). In Journeycake, 155 U.S. at 205, 213, the Court twice mentioned the agreement's crucial omission of a "provision for the setting apart of a distinct body of lands" to support its *holding* the Delawares "became incorporated into the Cherokee Nation[.]" Id. at

216.

In this appeal, the Delawares (and to a lesser extent the DOI) advance the novel theory they actually selected and settled upon a ten-by-thirty mile tract of land in the Cherokee Nation. Absolutely nothing in the administrative record supports the Delawares' theory. See *supra* n.3. Instead, the 1867 Agreement "contemplate[d] personal selection of separate tracts by individual Delawares." *Journeycake*, 155 U.S. at 205. The agreement's language could not be more clear: "the selections of the lands to be purchased by the Delawares, may be made by said Delawares in *any part* of the Cherokee reservation east of said line of 96°[.]" (emphasis added). The evidence in the administrative record demonstrates the Delawares did, in fact, select individual tracts of lands for their homes throughout the reservation. That some, or even "most," Delawares selected their tracts in the Cooweescoowee district of the reservation is immaterial.

Most importantly, the DOI's theory that the Delawares' two payments to the Cherokee Nation evidences "preservation" rather than "incorporation" is misguided. In *Journeycake*, 155 U.S. at 203, the Court was aware of the payments and did not express any disagreement with the finding that the Delawares' proportional payment into the national fund was not "susceptible of misconstruction and concerning it no controversy has arisen." *Journeycake*, 28 Ct. Cl. at 307. The Court then based its decision on the land purchase payment. In fact, the Court considered the Delawares' purchase of land occupancy rights indicative of their intent to incorporate. *Journeycake*, 155 U.S. at 212-13. Further, the Court reaffirmed *Journeycake*'s holding and reasoning in *Delaware Indians*, 193 U.S. at 143, when it concluded the Delawares only purchased life estates in the Cherokee lands. The Delawares' purchase of life estates in scattered tracts throughout the Cherokee Nation is inconsistent with the actions of a people seeking to "preserve" their tribal identity.

The DOI and Delawares also argue the 1867 Agreement is ambiguous and urge us to consider parol evidence. We decline for three reasons. First, the admission of parol evidence is improper because the 1867 Agreement is unambiguous. See *Richardson v. Hardwick*, 106 U.S. 252, 254 (1882); *Eastern Band of Cherokee Indians v. United States*, 117 U.S. 288, 311 (1886). Second, we cannot tell the Supreme Court that it incorrectly concluded the agreement did not suffer from any ambiguities requiring the consideration of parol evidence. *Delaware Indians*, 193 U.S. at 141; *Hutto v. Davis*, 454 U.S. 370, 375 (1982) (per curiam) (explaining that "unless we wish anarchy to prevail within the federal judicial system, a precedent of [the Supreme] Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be."). Third, and *assuming* for the moment the agreement is ambiguous (which it is not) and the Supreme Court had not held it unambiguous (which it did), the Delawares would still not be in any better position. The parties' contemporaneous actions evidenced their belief the Delawares incorporated into the Cherokee Nation.<sup>(6)</sup> See *Journeycake*, 155 U.S. at 216-17

We finally note the DOI's and Delawares' reliance on *Weeks* is misplaced. In *Weeks*, 430 U.S. at 75, the Supreme Court considered whether a claims statute excluding the "Kansas Delawares" the Delaware Indians who remained in Kansas under the 1866 Delaware Treaty from the statutory distribution of a claims award violated the Equal Protection Clause. The Court commented that "[d]espite their association with the Cherokees, these Indians, called 'Cherokee Delawares' in this suit, have over the years maintained a distinct group identity, and they are today a federally recognized tribe." *Id.* at 77 & n.8. The Court's dicta, see *Cherokee Nation*, 117 F.3d at 1502, indicated Congress' distribution of a claims award to the "Delaware Tribe of Indians," see Act of April 21, 1904, Chap. 1402, § 21, 33 Stat. 189, at 222, was sufficient to recognize the Delawares as a tribe for the limited purpose of the claims statute at issue in that case. *Weeks*, 430 U.S. at 77 n.8; see also *id.* at 94 (Stevens, J., dissenting). As Cohen's handbook on Federal Indian law explains:

The question whether a group is a tribe for purposes of statutes allowing claims to be asserted against the United States has arisen many times. Where several Indian groups are generally considered a single tribe for political and administrative purposes, Congress may nevertheless assign tribal status to portions of the tribe for claims purposes. For example, Tribe A and Tribe B have combined to form Tribe C and share a common reservation and common funds. However, at some time prior to their merger, Tribe A had suffered an injury for

which Congress later offers redress in the form of a jurisdictional act. In such a case Congress may recognize Tribe A as a tribe, entitled to bring suit in the Court of Claims, even though for most other purposes it is only a part of Tribe C.

See Felix S. Cohen, Handbook of Federal Indian Law Chap. 1, § B2d, at 12 (1982 ed.). For illustrative purposes, Cohen cites claims statutes allowing the Delawares to bring suit. Id. at 12 n.64; see also Federal Indian Law Chap. VI, § B-1, at 463 & n.32 (U.S. Dep't of Interior 1958); Cherokee Nation, 117 F.3d at 1502.

At most, Weeks stands for the proposition the Delawares reconstituted for claims purposes. Whether the Delawares were reconstituted be it through Act of Congress or administrative practice sometime after 1867 is not before us. See supra n.2. The present case, instead, turns on the DOI's interpretation of the 1866 Cherokee Treaty and 1867 Agreement. We thus have a duty to follow Journeycake and Delaware Indians because they directly control our interpretation of the agreement. Even *assuming* Journeycake and Delaware Indians conflict with the dicta in Weeks (which they do not), we nevertheless would be bound by those decisions. See Agostini v. Felton, 521 U.S. 203, 237 (1997) (explaining that "[i]f a precedent of th[e] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to th[e] Court the prerogative of overruling its own decisions."); see also F.T.C. v. Kuykendall, 371 F.3d 745, 752 (10th Cir. 2004) (en banc).

#### V.

We are not unsympathetic to the Delawares' cause. The DOI's unlawful actions, however, cannot provide the Delawares the status they seek. The agency's decision to extend recognition to the Delawares rested on an alleged "comprehensive legal analysis" that devoted three sentences, in a footnote, to the Supreme Court's decisions interpreting the 1866 Cherokee Treaty and 1867 Agreement. Agencies, like courts, must follow Supreme Court decisions and congressional acts. The DOI's recognition of the Delawares in this case was contrary to the United States Supreme Court's decisions in Journeycake and Delaware Indians and violated § 103(3) of the Federally Recognized Indian Tribe List Act.

Agencies, moreover, must follow their own rules and regulations. The DOI used a procedure heretofore unknown to the law "retract and declare" to purportedly re-recognize the Delawares. In so doing, the DOI's actions were arbitrary and capricious. The agency simply elected not to follow the Part 83 procedures for recognizing an Indian tribe and, furthermore, did not even properly waive application of those procedures. See 25 C.F.R. § 1.2. We accordingly hold unlawful and set aside the DOI's 1996 final decision. 5 U.S.C. § 706(2) (A). Any action taken on the agency's 1996 final decision is void. "Further comment on this case is unnecessary." Journeycake, 155 U.S. at 218.

REVERSED.

No. 03-5055, Cherokee Nation of Oklahoma v. Norton

SEYMOUR, Circuit Judge, concurring.

I agree with my colleagues that the Supreme Court's decisions in Cherokee Nation v. Journeycake, 155 U.S. 196 (1894), and Delaware Indians v. Cherokee Nation, 193 U.S. 127 (1904), control the outcome of this controversy. I therefore concur in the judgment. I write separately because I believe the majority unnecessarily denigrates the contrary position of the Delaware Tribe and the Department of Interior, which rely on the long and proud history of the Delaware Tribe's relations with the federal government to argue that the Tribe maintained its tribal sovereignty.<sup>(1)</sup> It is only after a very careful and particular examination of the Supreme Court's decisions in Journeycake and Delaware Indians in conjunction with an equally careful examination of the treaties and agreements they interpret, that one must conclude this controversy should be resolved in favor

of the Cherokee Nation.

Contrary to the position adopted by the majority, I am not persuaded the terms of the 1867 Agreement between the Cherokees and Delawares were in fact, or had to be, completely consistent with the specific terms outlined in the 1866 Treaty between the Cherokees and the United States. The 1867 agreement was between two sovereign powers, one of which, the Delaware Tribe, was not bound by the Cherokee Treaty with the United States. In *Delaware Indians*, the Supreme Court indicated as much. The Court noted that while the 1867 Agreement between the Cherokees and Delawares was made in contemplation of the terms laid out in the 1866 Cherokee Treaty, the treaty should not be deemed to control in determining the terms and rights allocated in the 1867 Agreement. *Delaware Indians*, 193 U.S. at 134-35. The Court stated that

the care with which [the agreement] was made and the evident intention of the parties to deal at arm's length with full knowledge of their respective rights and aims, leaves little to be gained from [the 1866 Cherokee Treaty and 1866 Delaware Treaty] as an aid to construction, except as a means of placing ourselves in the situation of the parties when the contract was signed and delivered.

*Id.* Hence, instead of viewing the 1866 Treaty as an exacting template against which to determine the Delawares' tribal status, the Supreme Court viewed the treaty as a general guide for determining the nature of the agreement between the Cherokees and Delawares.

Nor can it be said that the 1867 Agreement was entirely consistent with the terms set out in the 1866 Treaty. The Delawares' two payments to the Cherokee Tribe did not fit neatly within the payments described in either the preservation or incorporation option laid out in Article 15 of the treaty. *See Journeycake*, 155 U.S. at 196-98, 200-02 (setting out Article 15 of the Cherokee Treaty and the terms of the 1867 Agreement). Similarly, the 1867 Agreement's language did not explicitly mirror the language laid out in either treaty option. Rather, the agreement seemed to mix and match language appearing in both the incorporation and preservation options of Article 15 of the treaty. The 1867 Agreement spoke of "looking to a location of the Delawares upon the Cherokee lands," *Journeycake*, 155 U.S. at 200, which is indicative of the preservation option. Indeed, the Court in *Journeycake* stated that the preservation option was one in which a tribe merely located itself "within the limits of the Cherokee Reservation." *Id.* at 204. However, in the same sentence in which the 1867 Agreement spoke of locating the Delawares upon Cherokee lands, the agreement also spoke of consolidating the Delaware Tribe with the Cherokee Nation. *Id.* at 200, 205. Similarly, the 1867 Agreement's last paragraph also contained language mixing the preservation and incorporation options. Some language mimicked that appearing in the treaty's preservation option which ensured that "preserved" tribes would be afforded the same rights as native Cherokees, while at the same time the 1867 Agreement's last paragraph used the word "incorporated," which can be directly ascribed to the incorporation option in the treaty.<sup>(2)</sup>

In reviewing the varying language which appeared in the 1867 Agreement between the Cherokees and Delawares, the Supreme Court indicated its belief that the Delawares incorporated themselves into the Cherokee Nation. *Journeycake*, 155 U.S. at 216; *see also Delaware Indians*, 193 U.S. at 135-37, 143-44. Instead of giving weight to the agreement's language stating that the Delawares were intending to locate their tribe on Cherokee lands, the Court focused on the agreement's language which spoke of the Delawares' consolidation with the Cherokees. *Journeycake*, 155 U.S. at 213. Likewise, in reviewing the relevance of the Delawares' two payments to the Cherokee tribe, the Court did not deem the second payment to be for a distinct set of lands under the preservation option of Article 15. Rather, the Court construed the land payment as a means by which the Delawares secured for themselves an allotment position, should the Cherokee lands be allotted in the future. *Id.* at 215. The preservation of an allotment interest for tribes settling on Cherokee land, whether by incorporation or preservation, was not mentioned in any regard in the 1866 Cherokee Treaty. Thus, although the terms of the 1867 Agreement did not fit neatly within either option outlined in Article 15 of the 1866 Treaty, the Supreme Court nonetheless decided the Delawares had opted for incorporation. The Court reached this decision by attributing more weight to the agreement's incorporation language than to the language which implied preservation, and by virtue of the Delawares' failure to obtain separate land within the Cherokee Reservation.

*Journeycake*, 155 U.S. at 205-06, 213; see also *Delaware Indians*, 193 U.S. at 135-37, 144. The reason for this conclusion may have been in part due to the litigation position taken by the Delawares. In this regard, the Complaint filed in *Journeycake* by the Delawares asserted that under the 1867 Agreement, the Delawares had "abandoned their separate tribal organization." Aplt. supp. br., Second supp. add. at 8.

In sum, I am ultimately compelled to conclude the Supreme Court determined in *Journeycake* and *Delaware Indians* that the Delaware Tribe incorporated itself into the Cherokee Nation and abandoned its tribal sovereignty when it entered into the 1867 Agreement. Accordingly, it is irrelevant that the subsequent history of the Delaware Tribe's relations with the federal government and the Supreme Court's *dicta* in *Delaware Tribal Business Comm. v. Weeks*, 430 U.S. 73 (1977), on which the Department of Interior's 1996 decision in favor of the Delawares relied, arguably indicate to the contrary. See *Weeks*, 430 U.S. at 77 ("Despite their association with the Cherokees, these Indians, called 'Cherokee Delawares' . . . have over the years maintained a distinct group entity, and are today a federally recognized tribe.").

I therefore agree that we must **REVERSE**.

### FOOTNOTES

Click footnote number to return to corresponding location in the text.

\* The D.C. Circuit's opinion is not the law of the case because the court did not reach the merits of the Cherokee Nation's claim. See *United States v. Hatter*, 532 U.S. 557, 566 (2001).

<sup>2</sup> The Delawares have advanced an alternative "restoration" argument. They assert the "modern-era record alone is more than sufficient to sustain the [DOI's] 1996 decision, even if this Court were to disagree with the [DOI's] interpretation of the historical documents in this case." The district court ostensibly relied on a restoration theory to sustain the DOI's decision. See *Cherokee Nation*, 241 F. Supp. 2d at 1372-74. The district court erred because the DOI did not articulate "restoration" as a basis for its final decision. See *Texaco*, 417 U.S. at 397; *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983). Further, the DOI conceded at oral argument its position rested solely on a theory that the Delawares preserved their tribal identity when they relocated to the Cherokee Nation. We therefore decline to consider the Delawares' "restoration" argument because the issue is not properly before the court. We leave for another day what effect, if any, the post-1867 legislative and executive dealings with the Delawares had on their alleged status as a tribe. See *infra* at 23.

<sup>3</sup> The Delawares sent a delegation to the Cherokee Nation in October 1866 for "the purpose of selecting a new home for their people[.]" The delegation did not locate any suitable land west of the 96° meridian, but did find a satisfactory ten-by-thirty mile tract east of the 96° meridian. John Connor, principal chief of the Delawares, thereafter sent a letter to William P. Ross, principal chief of the Cherokee Nation, explaining the delegation had found a suitable tract of land the Delawares could settle upon to preserve their tribal organization under the 1866 Cherokee Treaty. The letter requested the matter be presented to the Cherokee National Council for final action. No evidence exists showing the matter was ever proposed to the council. Instead, the Delawares sent a delegation, of which John Connor was a part, to Washington D.C. to perfect the arrangement for relocating the Delawares to the Cherokee Nation. There, the Delaware delegation entered into the 1867 Agreement, which the President approved as the agreement and 1866 Cherokee Treaty required.

<sup>4</sup> As a result of disputes arising between the Delawares and Cherokee Nation over the proper distribution of monies from the Cherokee national fund, see Act of October 19, 1888, Chap. 1211, 25 Stat. 608, Congress enacted a statute providing the court of claims with jurisdiction "to determine . . . the just rights in law or in equity of the . . . Delaware Indians, who are settled and incorporated into the Cherokee Nation[.]" Act of October 1, 1890, Chap. 1249, § 1, 26 Stat. 636. The Act provided the Delawares with a private cause of action,




"either separately or jointly," against the Cherokee Nation and "[t]hat the said suit or suits may be brought in the name of the principal chief or chiefs of the said . . . Delaware Indians[.]" *Id.* §§ 2-3. Charles Journeycake, principal chief of the Delawares, filed suit under the Act on behalf of the Delawares. *See Journeycake*, 28 Ct. Cl. at 319 (decreeing the rights "of the Delaware Indians who are settled and incorporated into the Cherokee Nation"); *see also* C.A. Weslager, *The Delaware Indians: A History* 447 (1972) (explaining Journeycake was "authorized and empowered" to represent the Delawares in court).

5. The D.C. Circuit concluded in this case the Delawares were not entitled to assert sovereign immunity. *Cherokee Nation*, 117 F.3d at 1503. Relying on *Journeycake* and *Delaware Indians*, the D.C. Circuit held the Delawares relinquished their tribal sovereignty in relation to the Cherokee Nation because the two tribes consolidated into a single unit under the 1867 Agreement. *Id.* at 1501-03. The court explained the Delawares' two payments to the Cherokee Nation was consistent with their election to settle under the 1866 Cherokee Treaty's incorporation option. Furthermore, the parties' "use of the term 'incorporated' in the 1867 Agreement [was] sufficiently unambiguous to constitute an express relinquishment of the Delawares' status as a separate sovereign." *Id.* at 1501.

6. For example, then-Secretary Browning described the 1867 Agreement as providing for the uniting of two tribes. *See also Delaware Indians in Cherokee Nation Allotment*, 25 Pub. Lands Dec. 297, 301-302 (Dep't of Interior 1897). The Delaware delegation that entered into the 1867 Agreement represented to the Commissioner of Indian Affairs that the Delawares had "merged" themselves into the Cherokee Nation. The Delaware Council, then in Kansas, recognized their delegation had entered into an agreement providing for the "incorporation or merging" of the tribe into the Cherokee Nation and protested the same. Despite the original dissension, the Delawares ultimately moved to the Cherokee Nation and began, as described in *Journeycake*, receiving per capita distributions from the Cherokee national fund as citizens. "[T]he first manifestation of a claim of difference between the native Cherokees and the registered Delawares as to the extent of their interests in the lands or the proceeds thereof" did not occur until 1883. *Journeycake*, 155 U.S. at 216-17.

<sup>1</sup> Indeed, the Department of Interior relies on the nearly 100 years of administrative practice of recognizing the Delaware Tribe to support its position that the Delawares remained a distinct tribal entity. *See* Aplt. app. at 241-266 (Department of Interior 1996 Memorandum listing in detail its many years of interacting with Delawares as a district tribe).

<sup>2</sup> As a point of comparison, the 1869 Agreement between the Shawnees and the Cherokees is similarly inconsistent with the 1866 Cherokee Treaty. The terms of that agreement by no means followed anything along the lines detailed in the 1866 Treaty, as acknowledged by the Supreme Court in *United States v. Blackfeather*, 155 U.S. 218 (1894). There the Court examined the terms of the 1869 Agreement and commented that the Shawnee agreement neither contained a provision for the purchase of homes nor a provision for the payment of money into the Cherokee national fund. *Id.* at 220. Nonetheless, in looking at the language in the 1869 Agreement, which included a statement that the "Shawnees shall abandon their tribal organizations," *id.*, and language which followed almost exactly the incorporation language appearing in Article 15 of the 1866 Treaty, *id.*, the Court determined the Shawnees were incorporated into the Cherokee Tribe and should be afforded the same rights enjoyed by native Cherokees.

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Founded October, 1929, to Study and Commemorate the  
Transylvanians Movement, Members and Associates.

Oct. 3, 1930

Dear Mr. Buley

I would like to thank you and the Southern  
Cherokee people for their help on the farm this  
year, with the tobacco harvest.

Your people are hard workers.

Sincerely

W. H. Soaper

RESPONDENT'S  
EXHIBIT

8

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Miss Virginia Lockett  
Henderson, Ky.

### Corresponding Secretary:

Mrs. Harry Thistow  
Henderson, Ky.

### Treasurer:

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Henderson, Ky.

### Custodian:

Mrs. Julia Alves Clore  
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Mr. Therit E. Towles  
New York City  
Mr. Tom Wallace  
Louisville, Ky.  
Mrs. John Worsham  
Henderson, Ky.

## Executive Board:-

Miss Susan S. Towles  
Mr. B. S. Alves  
Miss Virginia Lockett  
Mrs. William Neel  
Mrs. Harry R. Thistow  
Mrs. S. S. Watkins

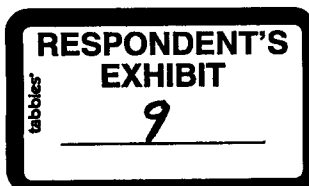
*Founded October, 1929, to Study and Commemorate the  
Transylvanian Movement, Members and Associates*

Dear Mr. Scott

We would like to thank you for speaking at  
our tea. It was very interesting, We learned alot  
about the Cherokee people and the Southern Cherokee.  
We would like for you to speak for us again sometime.

Miss Susan Towles,  
Henderson Public Library,  
Henderson, Kentucky.

June 12, 1935.

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Southern Cherokee Nation of Ky  
Principal Chief Michael "Man Fox" Bule  
7919 Pleasant Hill Road  
Henderson, Ky 42420  
May 4, 2005

One hundred twelve years ago, Governor John Young Brown of Kentucky recognized Southern Cherokee Nation, an Indian tribe of Kentucky. As Senator of Kentucky 2005, we as for your recognition.

Mitch McConnell  
Senator of Kentucky

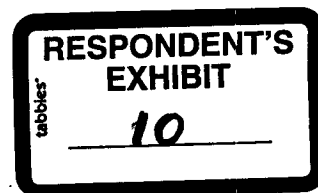
A handwritten signature in black ink, appearing to read "Mitch McConnell", written over a horizontal line.

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Article published Apr 22, 2006

## **Guilty verdicts in fraud trial**

### **Family convicted in orphanage investment scheme.**

PATRICK M. O'CONNELL  
Tribune Staff Writer

**SOUTH BEND --** A man who lured investors with fictional plans to turn northern Indiana estates into refuges for American Indian orphans was convicted Friday night on federal fraud charges.

Rodger D. Griggs, a former Elkhart, Osceola and LaPorte resident, was found guilty on 41 counts of wire fraud, money laundering, tax evasion and conspiracy after a three-week trial in U.S. District Court in South Bend.

A jury of eight women and four men found Griggs guilty of persuading investors to pour millions of dollars into the orphanage program, then steering the money into the accounts of family and friends.

Griggs and family members were convicted of using the investment money to buy and live at the lavish properties he falsely claimed were for the underprivileged children, including the LaPorte ranch that once belonged to Oakland Athletics owner Charlie O. Finley.

Griggs, who took the stand in his own defense, testified he never received loan money from anyone and insisted everything he did was for the benefit of the Southern Cherokee Nation, a tribe based in Alabama where he said he serves as chief. Griggs' wife, Julie, also was convicted on 18 counts of wire fraud and conspiracy.

Shawn H. Shroyer, Griggs' son-in-law, was found guilty on seven counts of wire fraud and conspiracy. Griggs' brother, Donald, was convicted on one count of conspiracy.

As the verdicts were read by U.S. District Judge Allen Sharp, Shroyer buried his head in his hands. Rodger Griggs stared straight ahead.

Julie Griggs wept as she left the courthouse, and Rodger, who moves with the aid of a walker, consoled her by putting his right arm around her shoulders.

Attorneys for the government and defense were not allowed to comment pending a Tuesday hearing to determine if Rodger and Julie Griggs and Shroyer should forfeit funds based on the verdict. The jury took about eight hours to convict the family on all counts following a trial that featured the testimony of dozens of investors who said they lost thousands of dollars in the bogus scheme.

Several witnesses testified they were drawn to the investment opportunity because it offered outstanding returns without risk to principal and simultaneously served a humanitarian purpose by forming living opportunities for American Indian orphans.

Griggs claimed he had access to secret government funds because of his role as a American Indian tribal chief, a contention the government argued was a fabrication.

Sentencing is scheduled for Oct. 20.

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# Former Olla Grant Writer Under Investigation

Former Olla Grant Writer Mellany Lee is under investigation by local, state and federal agencies and one charge has already been filed by the Olla Police Department.

According to Olla Police Chief Gary Taylor, Lee is under investigation by his office, state agencies in Oklahoma, and several federal agencies.

Taylor said Lee is accused of many different criminal activities, including fraud, and has conducted a pattern of fraudulent activity for several years.

"We have evidence that proves in the past several years she has used eight different aliases, three different date of births, four different driver's license numbers, and four different social security numbers," Taylor said. "Since starting this investigation a month ago, I have spoken with various people and agencies from across the country and have unveiled a pattern of deception from Lee where potentially thousands of dollars have been taken by her using fraudulent methods."

Lee was hired in June of 2005 on a contract basis with the Town of Olla as their grant writer. She submitted her resignation last month and has since moved from the area.

Taylor said her resignation had nothing to do with another job opportunity as Lee has said, but rather a decision by her to either resign or be fired.

## How The

### Investigation Started

Approximately six weeks ago, Olla Town Clerk Dawn Stott was finishing her end of the fiscal year paper work and realized that Lee had never turned in a copy of her driver's license as required for all town employees.

"All town employees are required to provide to the town a copy of their valid driver's license and social security number," Taylor said. "We have to check each year that their driver's license is valid and current for our insurance purposes."

Taylor said that Lee had failed to provide a copy of the information for nearly a year, but brought by a copy of a driver's license for Stott after the clerk's persistence.

"When she brought by the photo static copy, it was obvious that the license was

"However, she agreed to turn in her resignation as the Olla Grant Writer which she did before the last council meeting," the chief said.

Since that time, Taylor has continued investigating Lee and has uncovered a pattern of evidence that points to fraudulent activity by Lee.

## Investigation Leads To Oklahoma

Taylor said he received a call from a lady in Baton Rouge who provided him with much information concerning Lee's past.

"Among that evidence was a reference to an investigation in Oklahoma," he said. "I called and spoke with Paul Boyd of the US Postal Inspector Service in Oklahoma City, who verified they had an open investigation of Lee concerning her work with the Southern Cherokee Nation there."

Boyd said that Lee was a very close associate of six individuals that were involved recently in federal civil court trial for defrauding the Cherokee Nation.

"In the official court transcripts, it was noted that Lee was part of a scheme that printed fraudulent identification cards for the Cherokee Nation, selling them for \$25 a piece," Taylor said. "Lee had printed thousands of those bogus Indian cards where the proceeds were supposed to go to the Indian Nation. They were defrauding these people because she and the others involved didn't have any right to do that."

Taylor said that due to the continuing investigation by the U.S. Postal Service, the Bureau of Indian Affairs, the IRS, and the U.S. Treasury Department, much of the evidence to secure a conviction was withheld under a government seal.

Oklahoma officials are still investigating Lee and those associated with the scandal and are not sure if or when charges will be filed.

## Other Allegations

Taylor also noted that many other allegations have been made concerning Lee during his investigation, including from individuals in Louisiana who say Lee has committed theft against them.

"There is no way I can share with you all that has been uncovered since I began this investigation over a month ago," Taylor

rant for Lee for a charge of theft by fraud.

"This is based on the installments the town paid her on a weekly basis in lieu of grants she was supposed to receive," Taylor said. "Lee has yet to pay the town back for that money she took which totals at least \$1,600."

The amount owed is questionable because one of the grants the town received was actually written by Stott, with Lee only submitting the application.

What's more, Lee has already left Olla and is believed to be somewhere in Mississippi.

"We don't know where she is right now but we do have a warrant for her arrest and are interested in finding out where she is," Taylor said. "If anyone has any information, please contact the Olla Town Hall at (318) 495-5151."

Taylor said Lee could be using anyone of eight different alias she has used in the past, including Mellany Steelman, Mellany Stone, Mellany Olden, Mellany Renae McPhate, Mellany R. Lee, Mellany West, Mellany Fernandez, or Mellany Murphy. He said that some of those names reflect the seven different times she has allegedly been married.

## Church In Olla Left

### Owing Money

While in Olla, Lee was a member of Standard Baptist Church in Olla, where she wrote several grants for the church.

Among those was a state summer food program grant that saw the church subcontracting with Olla's Sunshine Café to prepare and distribute food this summer.

"The problem is, Lee did not have the documentation for the Olla program needed and the state has said it will not pay for the operation of the program," Taylor said.

"The state recently sent a fax to the Olla Town Hall addressed to Lee that said they would not pay for the food purchased or the costs associated with the café because the necessary documentation was not completed," Taylor said. "They said they came four times to Olla and could not find any paper work."

They gave the church a seven-day extension to get the documentation, but they have yet to be able to find it.

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a fake or had been altered," Taylor said. "The DL said it was issued in September of 1998 and expired in January of 2008 – ten years."

Although the picture on the DL was of Lee, the number on the license, when checked on the police computer, came back to a totally different person of a different race.

"The license number came back to a black lady from New Roads and when I checked the computer for a driver's license for Lee, I found that she had a different date of birth than what was on the fake DL and her license was suspended and expired," Taylor said.

Further investigation revealed that Lee had her driver's license suspended for non-payment of a traffic fine and the license expired in 2002.

"At that point, when we realized there was some type of fraud involved, we brought the information to the attention of our town attorney (Walter Dorroh, Jr.)," Taylor said. "After the mayor, myself, and Stott met with him, we agreed to offer Lee the opportunity to resign rather than be fired for her misrepresentation and deceptive actions, fearing that she might be capable of fraudulent actions or that she was hiding something from her past."

Lee was called to a meeting with Olla Mayor Bernard Miller, Taylor and Stott, where according to Taylor, she said the driver's license situation was a mistake and denied any wrongdoing.

said. "The more I go, the deeper it gets. Every day something new about Lee's conduct turns up."

Taylor said that according to information he has received, the resume' Lee provided to the town last year prior to her employment with the town is filled with unfactual information.

"Basically, I think most of what she claims she did in the resume is false," he said. "She claims to be a graduate of LSU, but we haven't even confirmed that yet. The list goes on and on like that."

He has verified that Lee does have a criminal record, including four arrests in Alaska, a shoplifting arrest from Louisiana, and a larceny arrest in Texas.

Most recently, a computer used by Lee at the Olla Town Hall was examined and it discovered that she was using it to form some type of Indian tribe made up mostly of her relatives from the Olla area.

"Information on that computer shows that Lee was trying to establish an Indian tribe in Mississippi with her relatives from the Olla area forming the tribe," Taylor said. "Documents downloaded including a list of the potential tribal council for the 'Coles Creek Indian Tribe', most from Olla area."

Taylor said the document containing those names was dated December 3, 2005, while she was employed by the Town of Olla.

#### **Warrant Issued By Olla**

Police Chief Taylor said that right now, the Town of Olla has issued an arrest war-

"One of the church people called Mel-lany and she told them it was sent in, but the state has no record of it," Taylor said. "If the paper work is not provided, the church will be left owing the food vendor and the café for the cost of preparing the meals."

In addition, Lee wrote a playground equipment grant for \$10,000 for the church, but failed to tell church members the grant was a matching grant.

"A spokesperson for the church said they did not have the money to match the \$10,000 grant and so they would have to deny the grant," Taylor said. "They were also told they would have to provide additional insurance coverage, which they don't have the money to pay for."

#### **Too Late for Olla**

Although Olla officials found out about Lee's fraudulent ways too late, Taylor hopes that by getting the word out to other entities and individuals they will be spared.

"It's too late for us, but I can get the message out and hopefully save someone else from this misfortune," the chief said. "This woman fraudulently misrepresents herself and seems to prey on the elderly and Native Americans."

"She's already stole from or misrepresented herself to many people but maybe we can stop her from doing it to others," he said. "I took a personal interest in this because I don't want to see my people taken advantage of."

**(EDITOR'S NOTE: Attempts to contact Lee for comment were unsuccessful.)**

# Louisiana State Police joins Olla PD with investigation of former Olla grant writer

The Louisiana State Police has joined with Olla Police Chief Gary Taylor as the investigation into the Town of Olla's former grant writer continues.

Taylor verified Monday that detectives with the Louisiana State Police are now officially involved in the case...a case that keeps growing.

"Since the article came out last Wednesday, I have had approximately a dozen telephone calls from individuals alleging more fraudulent activity by Mellany Lee," Taylor said Monday morning. "This investigation keeps getting bigger as more and more people come forward with information."

Lee was hired by the Town of Olla in June of 2005 and resigned in June of this year after it was discovered she was in possession of a fake driver's license. Her real driver's license is suspended and expired, according to police.

"We have evidence that proves in the past several years she has used eight different aliases, three different date of births, four different driver's license numbers, and four different social security numbers," Taylor stated in the news article last week.

The chief said evidence has been collected from various sources throughout the United States that shows a pattern of fraudulent activity by Lee.

As of Monday, an active arrest warrant has yet to be served on Lee. The warrant is for felony theft by fraud from the Town of Olla.

"Within a few hours of your paper out last Wednesday, we received telephone calls telling us where Lee was located in Mississippi," the chief said. "She was living in Cleveland, Mississippi, and working for a newspaper there."

By Friday, the arrest warrant

was in the hands of the Cleveland Police Department, who went to arrest Lee at a residence there. Officers discovered she had already left town.

"We have entered the arrest warrant into the national police computer as we continue to try to locate her," Taylor said. "With the Louisiana State Police now joining the investigation, it shouldn't take very long."

According to the newspaper in Cleveland, Lee has been terminated from her position there as a reporter. No one has seen Lee in Cleveland, Mississippi since late last week.

The state police joins other state and federal agencies investigating the former Olla grant writer, including the U.S. Postal Service, the Bureau of Indian Affairs, the IRS, and the U.S. Treasury Department. Most of the investigation centers around the alleged fraudulent activity

involving Lee and the Southern Cherokee Nation in Oklahoma. Councilman and Peacemaker of the Southern Cherokee Nation Andrew D. Light contacted this newspaper Friday, and reported that his group has "an overwhelming amount of evidence as to the activities being perpetrated by" Lee and at least two other people.

Light, along with many others, have been in contact with Taylor during the past month, supplying him with a large amount of evidence as the investigation continues.

"This investigation is far from over," Taylor said. "Right now, I'll be working with the state police bringing them up to date on everything."

If you have any information about Lee, you may contact Taylor at (318) 495-5151, or detectives with the Louisiana State Police at (318) 484-2190 ext. 115.